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Though the Australian Ballot system was heralded into and generally adopted in this country with enthusiasm and a confident belief in its great merit, and notwithstanding that in many respects it has not been a disappointment, it must be confessed that there are particulars in which it has not realized the expectations of those who espoused it so warmly. We have had our attention called from time to time to the tendency which has, of necessity, grown up with the system to cause the voter to be a mere machine to register the will of a nominating convention or board, most of the statutes providing for nominations by electors and either forbidding a voter to cast his ballot for others than those duly nominated or practically rendering a ballot cast otherwise of no validity. Our views upon this subject have been illustrated and emphasized by the recent decision of Sanner v. Patton by the Supreme Court of Illinois. In that case it appeared that one R. A. Patton was the only candidate upon the official ballot as nominated by electors for the position of commissioner of highways. Notwithstanding, quite a number of voters erased the name of Patton and inserted the name of S. H. Sanner. The judges of elections refused to count the votes given for the latter, contending that under the statute no candidate could be voted for unless his name appeared upon the official ballot as nominated by electors. The Supreme Court very properly overrule such a view of the law. They hold that the voter may write or paste upon his ballot, the name of any person whom he desires to have in office, and to hold otherwise would be to disfranchise or to disqualify the citizen as a voter or a candidate, and in the opinion of the court, to affect the law quite unnecessarily with the taint of unconstitutionality in such cases and that the legislature does not possess the power to take away from a resident citizen the right of suffrage, unless he has been convicted of an infamous crime, nor can the legislature do indirectly what they cannot do directly. They say that if the construction contended for by appellee be the correct one, the voter is deprived of the constitutional right of suffrage, he is deprived of the right of exercising his own choice, and when this right is taken away, there is nothing left worthy of the name of the right of suffrage, and the boasted free ballot becomes a delusion. This conclusion is undoubtedly a correct one and is in harmony with the view of the Supreme Court of Missouri in Bowers v. Smith, 17 S. W. Rep. 751 and the Court of Appeals of New York in People v. Shaw, 31 N. E. Rep. 512.

The recent case of Arnault v. Arnault decided by the Prerogative Court of New Jersey, wherein it is held that the law permits a man to leave all his property, which he may by will dispose of, to his mistress, and to ignore his wife, if he does so with free sound and disposing mind, pursuant to the formalities which the law prescribes, though the latest expression of well-settled and generally recognized law, suggests to the editor of the *New York Law Journal* the need of a statutory change more in harmony with modern ideas of marriage. We join in the opinion that the law ought to be different. As is well said by that journal "marriage is not only a union of sentiment and affection; it is also on the part of the wife a business partnership. She devotes her entire energy to the rearing of children and the management and control of domestic affairs. She waives the opportunity to accumulate a decent competency for her declining years in favor of her family and social duties. It would be only fair, and would embody a sound public policy, to secure by law to a wife some share of the property standing in the husband's name, to the accumulation of which she has often substantially contributed."

The court in the above case correctly state the existing law in the following language. "Every will is the product of some influence: The influence which arises from legitimate family and social relations comes without suspicion or taint of illegality, and there can be no presumption that it is unlawfully exercised merely from the fact that it appears that when the will was made the testator was surrounded by it, and it operated upon his mind to induce the testamentary disposition.

It is only when such influence is shown to have been unduly exerted over the subject of will making, so as to constrain the testator to do that which he would not have done if left to himself, that the law condemns it. Nor does the influence which arises from unlawful or immoral relations raise a presumption against the validity of the will, but, as the law abhors immorality, when the influence which produces a will arises from an immoral relation, its existence, standing as a significant fact, will be closely and suspiciously scrutinized by the courts. Particularly is the necessity for such scrutiny emphasized when the will prefers the influence of a mistress, usually predicated upon sensual charms and meretricious arts, to the just and honorable influence of a lawful wife, attributable to purity, virtue and affection. However, the law allows a man to leave all the property he may dispose of, by will, to his mistress, and to ignore his wife, if he does so with free, sound and disposing mind, pursuant to the formalities which the law prescribed. McClure v. McClure, 86 Tenn. 173, 6 S. W. Rep. 44; Kessinger v. Kessinger, 37 Ind. 341; Monroe v. Barclay, 17 Ohio St. 302, 316; *In re* Will of Mondorf, 110 N. Y. 450, 18 N. E. Rep. 256; Dean v. Negley, 41 Pa. St. 312; Rudy v. Ulrich, 69 Pa. St. 177; Main v. Ryder, 84 Pa. St. 225."

NOTES OF RECENT DECISIONS.

BANKS AND BANKING—NEGOTIABLE INSTRUMENT—SURETY ON NOTE—RELEASE.—In Pursifull v. Pineville Banking Co.'s Assignee, it is held by the Court of Appeals of Kentucky that where a bank owns and holds a note, and, at the maturity thereof, holds on general deposit for the maker a sum sufficient to pay the note, which it permits to be entirely checked out, and the maker afterwards becomes insolvent, a surety on the note is not liable. The court says:

In view of this statement from the record, and of the action of the court below in sustaining the demurrer to the original answer, and refusing to allow the amended answer to be filed, we think there is but one question to be considered by this court. That question is whether or not, in this State, the surety on a negotiable note, made payable at and discounted to and owned by a bank, which holds, on general deposit for the principal in the note, at the maturity thereof, a sum more than sufficient to pay the same, is discharged from liability thereon by reason of the failure of such bank to apply to the payment of the note a sufficient sum from this unappropriated deposit, and by reason of its permitting the entire deposit to be checked out for other purposes by the principal, who afterwards becomes insolvent. This question has never been settled by any adjudication of this court, and we are aware that the decisions of the courts of other States are not in entire harmony, and that there is some contrariety of opinion among the text writers on the subject. In considering the proposition, it is well for us to remember that this bank was the absolute owner of this note, and not a mere collecting agent, to look after the proper presentment of the note, and to demand payment in behalf of another. The bank was the creditor of Hurst, the principal in the note, to the amount thereof, and was his debtor in the amount of the deposit then standing to Hurst's credit in the bank. As to the right of the bank, under the doctrine of set-off, to have applied to the payment of this note, from Hurst's unappropriated deposit, enough money to pay the same, by simply charging the note to his account, there seems to be no difference of opinion, and it is only as to the duty of the bank in this respect, as between it and the surety on the note, that the authorities differ. As to this, Mr. Morse, in his textbook, says: "If a note payable at a bank is sent there for collection, and the bank fails to apply an unappropriated deposit of the maker to its payment, the indorser is discharged. When a creditor has within his control the means of paying the debt out of property of the debtor properly applicable to the purpose, and does not use the opportunity, but gives up the property, the surety is discharged." 2 Morse, Banks (3d Ed.), § 562. A similar doctrine is laid down in some of the decisions of the State courts, particularly in the cases from Pennsylvania, in one of which the learned judge, after referring to the well-recognized principles that the relation between the bank and its depositor is simply one of debtor and creditor, and that the bank has the right to apply an unappropriated general deposit to the payment of a matured note held by it against its depositor, which right it may waive unless the right of third parties has intervened, propounds the following query, which seems to us very aptly to illustrate the situation in this case, to-wit: "If I am the holder of A's note, indorsed by C, and when the note matures I am indebted to A in an amount equal to or exceeding the note, can I have the note protested, and hold C as indorser? It is true, A's note is not technically paid, but the right to set-off exists, and surely C may show, in relief of his obligation as surety, that I am really the debtor, instead of the creditor, of A. If this is so between individuals, why is it not so between a bank and individuals?" Bank v. Henninger, 105 Pa. St. 502. Counsel for appellee, however, in support of their contention that the conduct of the bank in this case, as set forth in the answer and admitted by the demurrer, did not operate as a discharge of the surety, rely mainly upon the cases of Bank v. Peck, 127 Mass. 302, and Bank v. Hill, 76 Ind. 223. As to the former,—the case from Massachusetts—it is sufficient to say that it is clearly distinguishable from this case. There the bank held two notes of B, one of which was executed by him in his official capacity as treasurer of a town, and the other was executed by him individually. B kept only a personal account with the bank. The note executed by him in his official capacity was indorsed by P, who, a few days after the maturity of that note, presented to the bank

the check of B on his individual account, and demanded that it be applied to the payment of the official note on which P was indorser. To this demand the bank answered that it had already applied B's deposit towards the payment of his individual note, which had also matured, though not until after the maturity of the official note. In the action which was brought against P by the bank to enforce the collection of this official note which he had indorsed, it was shown that neither this note nor its proceeds ever went into or constituted any part of B's per onal account in the bank, and it was accordingly held that the bank, as against the surety on this official note, had the right to charge up B's personal note, which had also matured, against his personal account, as it had already done before this demand was made upon it to pay the official note out of the account. The distinction between that case and this is apparent.

The case in 76 Ind., *supra*, relied on by counsel for appellee, does fully support the position for which they contend. But in that case it is also held, in conformity with the well-settled doctrine on the subject, that a bank has the right, under the state of facts admitted in this case, to apply the deposit to the payment of its demand, if it chooses to do so. It is furthermore held in that case that a creditor may not release a collateral security given by the principal debtor, or a lien which it may hold on his property, without discharging the surety; and these propositions are, we believe, recognized as fundamental in all the cases. If the surety be in the nature of a lien by pledge of collateral, or by mortgage, or under an execution against the principal debtor's property, then, in any such case, it would be admitted that a release by the creditor of such security would discharge the surety, to the extent, at least, of the value of the security so surrendered. Now, while it is true that the bank in this case had not, strictly speaking, a lien upon any money or property belonging to Hurst, and while the surety could not, perhaps, by paying this debt to the bank, have become entitled to demand of it repayment out of Hurst's deposit, which is laid down by some of the authorities as the true test, yet it seems to us that this bank, by the voluntary surrender to the principal of money more than sufficient to pay this debt, and which, it is conceded, it had a right to apply to that purpose, has been equally reckless of the interests of this surety as though it had surrendered a security on which it had a specific lien. As said by the text writer above quoted from in criticising this case in 76 Ind.: "If the bank, at the maturity of a note held by it, holds funds that, by the scratch of a pen, it could apply upon the note, thus securing itself, it is difficult to see why neglecting so easy a means of security is not as improper as giving up collateral expressly designated for the purpose of securing the note." 2 Morse, Banks (3d Ed.), § 563. The right on part of this bank to retain a sufficiency of Hurst's deposit gave it the absolute control of an ample security for the payment of this debt. A lien by pledge could give no higher right to the security than this bank had. It had the unquestioned right to actually appropriate and apply this money which it owed to Hurst to the payment of Hurst's debt to it. It matters not whether the right to the security has its origin in the doctrine of set-off or under a pledge as collateral. It is the extent of the right to the security, rather than the source from which that right springs, that should determine the question whether the creditor can voluntarily surrender the security without releasing the surety; and, having had in its hands a fund which it could, by the mere exercise of its option to do so, have used for the satisfaction of this debt, and which, we may assume, the dictates of ordinary diligence and of prudent banking would have prompted it to thus use, this bank has, in our judgment, been guilty of bad faith towards the surety, who, according to the facts as they are admitted here, knew of this large deposit to the credit of his principal, who received no notice of the non-payment of the note until nearly four years thereafter, and who assumed, as he had a right to do under these circumstances, that the note had been paid at maturity. If the facts be as alleged in the answer and admitted by the demurrer, and as we are bound, therefore, to assume them to be, this bank has shown such an utter disregard of, and such absolute indifference to, the interests of the surety, as to entitle him to a release from the liability which would have been satisfied by the principal, if the bank had simply chosen to have it satisfied, and had exercised its option in favor of, instead of against, the surety.

DEED—MADE ON SUNDAY—VALIDITY.—One of the points decided by the Supreme Court of Missouri in Roberts v. Barnes, 30 S. W. Rep. 113, is that Rev. Stat. Mo. 1889, § 3852, prohibiting the performance of work on Sunday does not render invalid a deed of trust executed on that day to secure a pre-existing debt. Upon that subject Brace, C. J., says:

That the deed of trust was executed on Sunday is beyond question. Is it void for that reason? Plaintiff contends that it is, because by statute it is provided that "every person who shall either labor himself, or compel, or permit his apprentice or servant or any other person under his charge or control to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, • • • shall be deemed guilty of a misdemeanor." Rev. St. 1889, § 3852. And in support of this contention we are cited to Jones on Mortgages (section 623), and several cases from other States, maintaining the proposition that "statutes forbidding the transaction of business on Sunday have the effect to render void all contracts executed upon that day." But these authorities are not in point under our statute, which contains no such comprehensive provision, and the inhibitions of which are limited to work and labor, hunting game and shooting, in the section cited; in horse racing, cockfighting, and playing at cards or any games, in section 3854; and to exposing for sale any goods, wares, or merchandise, keeping open any ale or porter house, grocery or tippling shop, and retailing any fermented or distilled liquor on Sunday, in section 3855. While contracts growing out of a violation of these provisions of the statute are void, and will not be enforced by the courts (Bernard v. Lupping, 32 Mo. 341), other business contracts are left by our statute as they were at common law; and as the common law makes no distinction between Sunday and any other day, as to the making of contracts, and all other acts not of a judicial nature, it is not seen upon what principle a note or deed executed on Sunday could for that reason alone be held void. And so it has been ruled in this State that a promissory note executed on Sunday is not for that reason void (Kaufman v. Hamm, 30 Mo. 387; Moore v. Clymer, 12 Mo. App. 11; Glover v. Cheatham, 19 Mo. App. 656); and elsewhere, under statutes similar to ours, it has been

held that contracts made on Sunday in matters of business other than such as is prohibited by the statute, are valid (Bloom v. Richards, 2 Ohio St. 387; Boynton v. Page, 13 Wend. 425; Johnson v. Brown, 13 Kan. 529; Horacke v. Keebler, 5 Neb. 355; Hellams v. Abercrombie, 15 S. C. 110; Moore v. Murdock, 26 Cal. 514). The cases in which contrary rulings have been made will be found in the main to be under statutes which prohibit generally the transaction of any secular business on Sunday, except works of necessity or charity; but such is not the scope of our statute, nor the statutes of many of the States. It was not necessary to pass upon this question in Gwinn v. Simes, 61 Mo. 335; and the fact that the judgment of the court upon the subject was reserved in that case ought not to impair the force of the authorities cited. The fact that the acknowledgment was taken on Sunday neither impairs nor strengthens the integrity of the instrument. Acknowledgment is for the purpose of registration; and registration, to impart notice. No question of notice or priority of lien is involved in this issue. It follows from what has been said that the deed of trust cannot be held to be void because executed and acknowledged on Sunday.

HOTEL KEEPER — LIABILITY FOR MONEY STOLEN FROM SAFE.—In Taylor v. Downey, 62 N. W. Rep. 716, it is held by the Supreme Court of Michigan that a hotel keeper in whose safe a regular boarder deposited money for safe keeping was, at most, a bailee for hire and not liable where his night clerk stole the money, no proof being offered of want of ordinary care in employing the clerk. The following is from the opinion of the court:

Counsel for the plaintiff argue, further, that the defendant "made it a part of his business to receive and take charge of the property of their boarders, and are liable for its safe keeping," and that, while "there is no direct compensation for this service, • • • the contract for the safe-keeping was accessory to the main contract for board, and the plaintiff is entitled to damages for the breach of it, the same as a traveler upon a railroad train for the loss of his baggage." We think there is a radical difference, the contract of the railroad company amounting to an undertaking to deliver the baggage as well as the passenger. The cases cited to sustain this point are cases of innkeeper and guest. 1 Smith, Lead. Cas. 416; Needles v. Howard, 1 E. D. Smith, 54. There is not a uniformity of decision upon this question of a boarding house keeper's liability to a boarder. In Regina v. Hartley, 3 El. & Bl. 144, a divided court affirmed the instruction that the boarding house keeper did not contract to safely keep baggage of a boarder. This was where a servant carelessly left a hall door open, permitting a thief to enter and steal the baggage, which was in the hall. In Holder v. Soulby, 8 C. B. (N. S.) 263, Earl, J., protested against the claim that it was the duty of the keeper of a lodging house to take care of a lodger's goods, and said that, where the proprietor had done nothing which amounts to a misfeasance, he knew of no authority or principle upon which he could be held responsible for mere absence of care. In a note to that case it is said that, "even in the case of a common inn, the innkeeper is not liable as such to persons who reside permanently at his house as boarders, nor otherwise than for actual negligence," citing Chamberlain v. Masterson, 26 Ala. 371; Manning v. Wells, 9 Humph. 748. In Lawrence v. Howard, 1 Utah, 142, it was held that requiring lodgers to lock their rooms and deposit the key at the office was ordinary diligence. Indeed the court went further, and held that only slight care was required, implying that there was no bailment for mutual benefit in that case. The goods were stolen from the room where the proprietor left them after the plaintiff's departure. The case of Jeffords v. Crump, 12 Phila. 500, holds that "an innkeeper is not liable for goods of a boarder, stolen from the inn, unless there be proof of gross negligence;" thus implying, as did Lawrence v. Howard, that it was a case of *depositum*. See, also, Neal v. Wilcox, 4 Jones (N. C.), 146. The case of Smith v. Read, 6 Daly, 33, is perhaps as strong a case in support of the plaintiff's contention as any, and this goes no further than to hold that ordinary care is due. See, also, Cayle's Case, 8 Coke, 32; Bac. Abr. "Inns and Innkeepers," ch. 5; Vance v. Throckmorton, 5 Bush, 41; Woolen Co. v. Proctor, 7 Cush. 424; Hancock v. Rand, 94 N. Y. 1; Bish. Non-cont. Law, § 1171; Johnson v. Reynolds, 3 Kan. 257; Car Co. v. Lowe (Neb.), 6 Lawy. Rep. Ann. 809, and note, 44 N. W. Rep. 226; Shoecraft v. Bailey, 25 Iowa, 553. It is probable that this is the limit of the rule, viz., that boarding house keepers are liable as bailees for mutual benefit, for the preservation of goods brought upon the premises by boarders. The nature of the liability is not changed by a deposit in the safe, though the degree of care may be increased over that required where the boarder retains the custody of valuables; but the keeper of the house is still a bailee for mutual benefit, and still owes the duty of ordinary care, which varies in degree as the responsibility is thrown upon him, or is assumed by the owner.

WILL—LOSS OF CODICIL.—The Supreme Court of Iowa decide in *In re* Sternberg's Estate that the execution and loss of a codicil, the contents of which are unknown, does not defeat the establishment of a last, duly-executed, and published will, in the absence of evidence that the codicil revokes some part thereof. The court said in part:

We have the single question whether the fact of the execution and loss of the codicil should defeat the establishment of this will. The will is confessedly the last and legally executed will of Ruvina Sternberg, but appellants contend that as the codicil became a part of the will, the will cannot be established without the codicil, and that as that is lost, and its contents cannot be ascertained, the estate must be settled and distributed as provided by statute. They cite Wallis v. Wallis, 114 Mass. 510; Stevens v. Hope, 52 Mich. 65, 17 N. W. Rep. 698; *In re* Cunningham, 38 Minn. 169, 36 N. W. Rep. 269,—and other cases to this effect: That proof of the execution of a later will, containing a clause revoking former wills, will defeat the establishment of the former, though the latter has been lost or destroyed, and its contents cannot be ascertained. If we may apply the rule announced in these cases to a lost codicil, it will not defeat the establishment of this will, for there is no evidence that the codicil revoked, or was in conflict with, any provision of the will. The last will must prevail, and necessarily revokes all former wills. If the last instrument is but "an addition or supplement to a will," it is a codicil, and both must stand. A codicil

does not necessarily revoke any of the provisions of the will of which it becomes a part. It certainly does not revoke the will, but, on the contrary, reaffirms and republishes it. 3 Am. & Eng. Enc. Law, 296. The mere fact that a codicil was executed does not warrant an inference that it revoked or changed any of the provisions of the will. If the codicil was produced, or if its loss and contents were proven, that would not defeat the establishment of this will, but both would be established together. That the codicil is lost, and its contents unknown, should not defeat the confessedly last and duly-executed will of the testatrix, unless it appears that the codicil was in conflict therewith. Under the rule in the cases cited, it is only when the subsequent will contains a revocation of former wills that its execution will defeat the former will. "The question in a proceeding to probate a will is simply whether the writing is the last will of the deceased, and whether it was duly executed and published by him as such. Admission of the will to probate decides no question but that relating to its due execution and publication." Lorieux v. Keller, 5 Iowa, 196. We are of the opinion that the fact of the execution and loss of a codicil, the contents of which are unknown, does not defeat the establishment of a last and duly-executed and published will, in the absence of evidence that the codicil revokes some part thereof.

MUNICIPAL CORPORATION — ERECTION OF ELECTRIC LIGHT POLES—ABUTTING OWNERS. —In Loeber v. Butte General Electric Company decided by the Supreme Court of Montana, the defendant company under contract to furnish electric light for a city, set one of its poles in the center of the sidewalk in an alley in the rear of plaintiff's saloon, about 20 feet from the rear entrance thereto. A city ordinance regulating the location of such poles made the use of the alley necessary, and the situation of the city hall rendered the other side unavailable. It was shown that the location of the pole in no way inconvenienced plaintiff or endangered his property. It was held not an interference with plaintiff's rights, nor an unreasonable use of his easement in the alley, against which injunction would lie. The court says:

> The streets and alleys therefore became dedicated to the public use before the conveyance of the lots to plaintiff or his predecessors. Hershfield v. Telephone Co., 14 Mont. 102, 29 Pac. Rep. 883. The plaintiff, therefore, is not the owner in fee of the alley in which the defendant erected its poles. Nor can he complain in this action, if the city of Butte had the power to permit the defendant to erect electric light poles wherewith to light the city, unless by erecting such poles an additional or unusual servitude was imposed upon the easement granted by the city. But we think that a pole used for electric light purposes is within an urban servitude where it appears that the pole in question is intended to serve public interests. Rand. Em. Dom. § 401; Keasby, Electric Wires, § 91; McCormick v. District of Columbia, 54 Am. Rep. 284. In considering the use of streets where electric railroad poles are erected, —and a use for electric light poles should be similarly regarded,— the courts sustain, generally, the principle recognized in Hershfield v. Telephone Co., *supra*, that "any use of a street which is limited to an exercise of the right of public passage, and which is confined to the mere use of the public easement, whether it be by old methods or new, and which does not tend in any substantial respect to destroy the street as a means of free passage, common to all the people, is perfectly legitimate." By such uses the rights of the abutting owners are not invaded. It is simply a user of a right already vested in the public. Halsey v. Railway Co., 47 N. J. Eq. 380, 20 Atl. Rep. 859; Gay v. Telegraph Co., 12 Mo. App. 485. We fail to see how a pole 12 or 15 inches in diameter, 20 feet distant from the doorway, can impede free ingress to the rear entrance of plaintiff's beer hall. The power to light the streets of the city of Butte has been delegated to the municipality by the legislature. Comp. St. Mont. p. 674. By ordinance of the city council the defendant was authorized to erect poles throughout the city, and only on one side of the street. Under the authority and permission of the city the defendant, therefore, properly erected, or was about to erect, the particular pole complained of, in the alley in the rear of plaintiff's lots. The testimony establishes the fact that there is no serious interference with the air or light to plaintiff's property, or access thereto. The use of the street for the contemplated purpose is in no wise repugnant to the general use to which streets of cities may be appropriately put in yielding to the necessities for the convenience and comfort of the inhabitants thereof. Tuttle v. Illuminating Co., 50 N. Y. Super. Ct. Rep. 464; Hershfield v. Telephone Co., *supra*. The pole was being erected at the most convenient and suitable place. It was necessary to the successful conduct of defendant's business in lighting the streets of the city. Considering all these facts, the plaintiff cannot complain. Johnson v. Electric Co. (Sup.), 7 N. Y. Supp. 716; Keasby, Electric Wires, § 89; Construction Co. v. Heffernan (Sup.), 12 N. Y. Supp. 336; Lewis, Em. Dom. § 130. From all the evidence, and the pleadings, and the principles of law applicable thereto, we are of opinion that there was no unreasonable use of the streets by the city, and no substantial interference with any of the rights of plaintiff. A court of equity will not, therefore, interfere. The judgment of the district court is reversed, and the cause remanded, with direction to dissolve the injunction heretofore granted.

THE REQUISITE INSURABLE INTEREST IN AN ASSIGNEE OF A POLICY OF LIFE INSURANCE.

There has long been a controversy between the courts of the several States upon the question indicated in the subject of this article.[1] Where the original contract of life insurance is valid, some courts of high authority have held that the assured and the beneficiary might subsequently assign the contract to any

[1] "Insurable Interests," 25 Cent. L. J. 27; "Insurable Interest in Human Life," 1 Cent. L. J. 602.

person, even though the assignee made no pretense to any interest, founded either upon marriage, blood relationship or other domestic relations, or the relationship of debtor and creditor, without affecting the validity of the contract and carrying with the assignment the entire interest of the assured and beneficiary in the policy.[2]

Where, as in New Jersey,[3] no insurable interest is legally necessary to support the contract of life insurance, the doctrine above stated is logically correct. But it is difficult, in those jurisdictions where the perils of wagering contracts are recognized, and where the policy must, as an essential to its validity, be issued in the first instance in favor of one having, by force of legal relationship or domestic *status*, an insurable interest in the life of the assured, to see by what possible reasoning a subsequent assignment of the policy is withdrawn from the force of the rule. An exception to the doctrine, however, prevails in nearly all of the jurisdictions where the foregoing principle has been announced, in cases where the transfer or assignment is merely the execution of the intention of the parties as it existed at the time the original contract was made; where a first beneficiary, having a legal insurable interest, was designated in the policy for the mere purpose of thereafter assigning it to the beneficiary having no such interest.[4] And this exception, reaffirming, in terms, the wholesome doctrine that public policy demands that insurable interest exist in such cases, makes the holdings we have referred to still more obscure and difficult of intelligent explanation.

One difficulty encountered in a comparison of the conflicting decisions, arises from the fact that so few courts have dealt with the question as to who "took out" the insurance, *i. e.*, made the formal application therefor, and paid the premiums thereon, as affecting the merits of the question of public policy arising in an action on the policy by the assignee having no insurable interest. The question has never been squarely confronted and discussed, so far as the writer can ascertain. It is constantly met with incidentally,[5] but deserves most careful thought and consideration as a question in chief, in every instance where it arises. Where A insures his life in favor of B, who has none of the recognized elements of insurable interest in the life of A, the transaction may be regarded as against public policy. But it clearly, of itself, is not a wagering contract, as it would be if B had procured the insurance and paid the premiums. The fundamental principle of the ancient reasoning on the subject was, the supposed temptation to the beneficiary to curtail the existence of the assured; that to support the contract the beneficiary's interest should lie in the direction of prolonging the life of the assured, either as a matter of affection or sentiment, as where ties of affinity or consanguinity existed, or as a matter of financial and pecuniary benefit, where the assured was contributing to the support or profit of the beneficiary, as in cases of partnership or otherwise.[6] This being the reason for the old rule, it should follow, in the supposed case, that if B sought and paid for the insurance, his disposition to realize at an early day on his investment would certainly be greater than where A, of his own volition, and at his own cost, sought B out and made him his beneficiary. The whole of the primary reasoning upon the subject has been based upon analysis of motives, as they would be evidenced and assert themselves under given conditions; and the potent factor we have suggested has not met with due regard. This line of reasoning must, of course, extend to the class of cases under consideration, where the beneficial interest has been transferred from one having the insurable interest to one who has not. The question as to who pays the premiums after the transfer is certainly

[2] Fitzpatrick v. Hartford, etc., Ins. Co., 56 Conn. 116; Martin v. Stubbings, 126 Ill. 387; Rittler v. Smith, 70 Md. 261; Eckel v. Renner, 41 Ohio St. 232; St. John v. American Mutual Ins. Co., 13 N. Y. 31; Mut. Ins. Co. v. Allen, 138 Mass. 24; Scott v. Dickson, 108 Pa. St. 6; Olmsted v. Keyes, 85 N. Y. 593; Clark's Admr. v. Allen, 11 R. I. 439; Bursinger v. Watertown Bank, 67 Wis. 75; Murphy v. Red, 64 Miss. 614; Cannon v. N. W. M. Life Ins. Co., 29 Hun, 472.

[3] Trenton, etc., Ins. Co. v. Johnson, 4 Zab. 576.

[4] Olmsted v. Keyes, *supra*; Ætna Life Ins. Co. v. France, 94 U. S. 561; Conn. Mutual Life Ins. Co. v. Schaefer, 94 U. S. 457; Cammack v. Lewis, 15 Wall. 643.

[5] Milner v. Bowman, 21 N. E. Rep. 1094; Gilbert v. Moose, 104 Pa. St. 74; Campbell v. New England Ins. Co., 98 Mass. 381; Trinity College v. Travelers' Ins. Co., 113 N. C. 244; Valton v. Nat. Loan Life Soc., 20 N. Y. 32; Cunningham v. Smith, 70 Pa. 450; Downey v. Hoffer, 110 Pa. 109.

[6] Ruse v. The Mutual Benefit Life Ins. Co., 23 N. Y. 525.

one of weight as to public policy. But it is considered only incidentally, and almost invariably as a matter of small moment, in the decisions.[7]

A further stumbling block to the courts is found in the rule of law, that where a beneficiary's insurable interest in the life of the assured ceases, the policy continues of force and unaffected by the determination of the interest.[8]

Arguing from this rule, it has been held that a beneficiary who once had an insurable interest which has terminated, ought not to stand on a better footing than the assignee of a policy valid in its inception,[9] and consequently no insurable interest ought to be required in an assignee of such a policy. The confusion in the decisions of the American courts is largely traceable to the obscurity in which the growth, development and principles of the doctrine of insurable interest at common law are involved. It is a mooted question as to whether insurable interest was required at common law to effect a valid assurance. Those who hold that it was not required, look largely for authority to the adoption of 14 Geo. III., 3, ch. 48, which provided that "no insurance shall be made on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and that every assurance made contrary to the true intent and meaning of this act shall be null and void, to all intents and purposes whatsoever." Whether the enactment of this statute argues the absence of such requirements in beneficiaries at common law, it is beside our present purpose to discuss. But out of an adjudication under this act[10] has arisen a principle that has added to the conflict of decisions on our subject in this country. In that case Shadwell, V. C., held that as the statute did not expressly and in terms relate to assignments of valid policies, that assignments were still without the scope of its operation, and, in the language of the court, that "a purchaser (of a policy of assurance) for a valuable consideration is entitled to stand in the place of the original assignor, so as to bring an action in his name for the sum assured." The principle announced in this opinion has been repeatedly invoked to withdraw such assignments from the purview of the gambling contract enactments of the several States. The real meaning of the court probably was that the purchaser (assignee) could recover, but would de treated as an trustee of the proceeds, holding them for the benefit of whoever might be lawfully entitled to them.[11]

Another argument is used to the same end, namely, that the mere execution of an assignment of a policy of assurance, and the assent of the insurance company thereto, do not operate to make a new contract, but that the contract continues in every respect of as full force and effect as before.[12] The force of this reasoning must be admitted. But after a thorough review of the cases, the question resolves itself into the simple problem of whether insurable interest is an essential in valid life assurance at all. If it is, the many holdings exempting an assignee from the rule are unsound. It would, indeed, be harsh in many cases to hold that the cessation of the interest of a beneficiary in his assured's life would terminate his interest in, and right to recover upon the policy. But the better doctrine in all cases would be to limit the beneficiary's recovery to the sums expended by him upon the policy with interest, so putting the beneficiary on the same footing as many courts place any creditor beneficiary.[13]

[7] Olmsted v. Keyes, *supra;* Scott v. Dickson, *supra;* Equitable Ins. Co. v. Paterson, 41 Ga. 338; Succession of Hearing, 26 La. Ann. 326; Bloomington Mutual Ins. Co. v. Blue, 120 Ills. 121; Rawls v. American Mutual Ins. Co., 27 N. Y. 282; Fairchild v. N. E. Mutual Ass'n, 51 Vt. 613; Burton v. Conn. Mut. Life. Ins. Co., 119 Ind. 121.

[8] Dalby v. India & London Assur. Co., 15 C. B. 365; Law v. London Policy Co., 1 Kay & Johns. 223; Loomis v. Eagle Ins. Co., 6 Gray, 396; Prov. Ins. Co. v. Baum, 29 Ind. 336; Rawls v. American Ins. Co., 27 N. Y. 282; Sides v. Knickerbocker Life Ins. Co., 16 Fed. Rep. 650; Carson v. Garnier, 113 Pa. 438.

[9] Mutual Ins. Co. v. Allen, 138 Mass. 36.

[10] Ashley v. Ashley, 3 Sim. 149. See discussion of act in Hurd v. Doty (Wis.), 21 L. R. A. 746.

[11] Equitable Life Assur. Soc. v. Hazlewood, 75 Tex. 338; Lewy v. Gilliard, 76 Tex. 400; Goldbaum v. Blum, 79 Tex. 638; Mut. Life Ins. Co. v. Blodgett (Tex.), 23 Ins. L. J. 812; Roller v. Beam, 86 Va. 512; Tatum v. Ross, 150 Mass. 440.

[12] Franklin Ins. Co. v. Sefton, 53 Ind. 380; Hutton v. Merrifield, 51 Ind. 24; Mutual Life Assur. Co. v. Allen, *supra;* Loomis v. Eagle Ins. Co., 6 Gray, 396; Palmer v. Merrill, 6 Cush. 282; Forbes v. American Ins. Co., 15 Gray, 249; Ashley v. Ashley, *supra;* Campbell v. New England Ins. Co., *supra.*

[13] Page v. Bernstein, 102 U. S. 664; Tateman v. Ross, 150 Mass. 440; Goldbaum v. Blum, *supra;* Johnson

The reasoning of Mr. Justice Field in Warnock v. Davis[14] must commend itself, eventually, to the courts, as being not only logically correct, but founded on simple justice and sound public policy; he says: "The assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name. * * * If there be any sound reason for holding a policy invalid when taken out by a party who has no interest in the life of the assured, it is difficult to see why that reason is not as cogent and operative against a party taking an assignment of a policy upon the life of a person in which he has no interest. The same ground which invalidates the one should invalidate the other, so far, at least, as to restrict the right of the assignee to the sums actually advanced by him. In the conflict of decisions on this subject we are free to follow those which seem more fully in accord with the general policy of the law against speculative contracts upon human life."

There are a considerable number of decisions in accord with this doctrine.[15]

JAMES L. HOPKINS.

St. Louis.

v. Alexander, 25 N. E. Rep. (Ind.) 706; Archibald v. Mut. Life Ins. Co., 38 Wis. 542; Swick v. Home Life Ins. Co., 2 Dill. (U. S.) 160.

[14] 104 U. S. 775.

[15] Helmetag v. Miller, 76 Ala. 183; Stevens v. Warren, 101 Mass. 564; Basye v. Adams, 81 Ky. 368; Mo. Valley Ins. Co. v. Sturges, 18 Kan. 93; Mo. Valley Ins. Co. v. McCrum, 36 Kan. 146; Hoffman v. Hoke, 112 Pa. St. 377; Franklin Ins. Co. v. Hazzard, 41 Ind. 116; Ingersoll v. Knights of Golden Rule, 47 Fed. Rep. 273; Crotty v. Union Mutual Life Ins. Co., 144 U. S. 623; Gilbert v. Moose, *supra*; Mutual Life Ins. Co. v. Armstrong, 117 U. S. 598.

VALIDITY OF CONTRACT TO WAIVE EXEMPTION.

MILLS v. BENNETT.

Supreme Court of Tennessee, April 18, 1895.

A contemporaneous agreement made by one contracting a debt to waive the benefit of the exemption laws is void as against public policy.

MCALISTER, J.: The only question presented for determination in this cause is whether a debtor may waive its exemptions for the benefit of his creditor. The stipulation for a waiver of exemptions was incorporated in the following note, viz.: "Memphis, Tenn., Aug. 23, 1894. Thirty days after date, I promise to pay to the order of G. M. Anderson five dollars. I do hereby agree to waive my rights to exemption under the laws of the State of Tennessee until the bill is paid in full. Value rec'd. H. H. Bennett. Due. Witness: J. M. Simms. Wm. H. Mills." Indorsed: "I do hereby transfer the within note to W. H. Mills. G. M. Anderson." The defendant, Bennett, is a daily laborer, in the employment of Stewart Gwynne & Co., a mercantile firm in the city of Memphis. The creditor is seeking by these proceedings to subject to the payment of his judgment wages due Bennett, which are exempt by law from execution, seizure, or attachment. Code, § 2931. It appears from the record that Bennett is the head of a family, with a wife and three children. This consideration, however, is immaterial, since it is not necessary in order to entitle the defendant to this particular exemption that he should have been the head of a family. Of course, this fact only emphasizes the necessity for such exemption, but it is not material as a matter of law. There are other exemptions which are dependent upon this condition, and the validity of contracts entered into by the head of the family is considered from this point of view. It will be observed that the defendant in this case, upon the face of the note, waives all his exemptions,—those secured to him as the head of a family, and those to which he is entitled independent of the family. Is such a contract valid and enforceable?

It was held in the case of Denny v. White, 2 Cold. 283, that "the property exempt from execution in the possession of the head of a family is held by him for the use and benefit of the family; and, while he has the right to sell or exchange such property, it cannot be levied on and sold on execution by his consent, this being a privilege he cannot waive." Said the court, viz.: "The language of the act is imperative. The property exempt shall not be liable to seizure and sale by execution, and the head of the family cannot waive the right as those dependent on him are under the protection of the law and secured in the enjoyment of the property." In the case of Cox v. Ballentine, 1 Baxt. 362, it was held that the head of the family has the right to sell, exchange, or mortgage the exempt property, and the legislature has no power to prohibit him. See, also, Cronan v. Honor, 10 Heisk. 534. It is suggested that these cases are somewhat contradictory, and perhaps irreconcilable. The conflict, we think, is more apparent than real. "There is an essential difference," says the Supreme Court of Kentucky, "between an executed contract by which the owner is divested of title and an executory agreement by which the debtor merely promises that in future he will not take advantage of or claim the benefit of a particular statute. * * * The law in its wisdom, for the protection of the poor and needy, has said that certain property shall not be liable for debt, not so much to relieve the debtor as to protect his family against such improvident acts on his part as would reduce them to want. * * * If such a contract is upheld, the exemption laws of the

State would be entirely obsolete, and the destitute deprived of all claim they have to its beneficient provisions." Moxley v. Ragan, 10 Bush, 156. Says the Supreme Court of Illinois, viz.: "That such a waiver, where the same is attempted to be made by an executory contract, is ineffectual, and will not be enforced, is definitely settled. * * * Such contracts contravene the policy of the law, and hence are inoperative and void. The owner may, if he choose, sell or otherwise dispose of any property he may have, however much his family may need it; but the law will not aid in that regard, nor prevent him to contract in advance, that his creditor may use the process of the courts to deprive his family of its use and benefit when an exemption has been created in their favor. Laws enacted from considerations of public concern, and to subserve the general welfare, cannot be abrogated by mere private agreement." Recht v. Kelly, 82 Ill. 147. Says Judge Denio: "The maxim '*Modus et conventio vincunt legem*" is not of universal application. It applies only to agreements in themselves legal. Where no rule of law or principle of public policy is concerned, the parties may by contract make a law for themselves. One object of municipal law is to promote the general welfare of society. The exemption laws seek to accomplish this by taking from the head of the family the power to deprive it of certain property by contracting debts which shall enable the creditors to take such property on execution. The parties to this contract sought to set aside these laws so far as this debt was concerned. This they could not do." The learned judge says: "I am of opinion that a person contracting a debt cannot agree with the creditor that, in case of non-payment, he shall be entitled to levy his execution upon property exempt from execution by the general laws of the State. * * * If effect shall be given to such provisions, it is likely that they will be generally inserted in obligations for small demand, and in that way the policy of the law will be completely overthrown. Every honest man who contracts a debt expects to pay it, and believes he will be able to do so without having his property sold on execution. No one worthy to be trusted would therefore be apt to object to a clause subjecting all his property to levy on execution in case of non-payment. It was against the consequences of this overconfidence and the readiness of men to make contracts which may deprive them and their family of articles indispensable to their comfort that the legislature has undertaken to interpose. Where a man's last cow is taken on an execution on a judgment rendered upon one of these notes, it is not sufficient to say that it was done pursuant to his consent, freely given when he contracted the debt. The law was designed to protect him against his own improvidence in giving such consent. The statutes contain many examples of legislation based upon the same motives. The laws against usury, those which forbid imprisonment for debt, and those which allow a redemption after the sale of land on execution are of this class.' Kneettle v. Newcomb, 22 N. Y. 249.

The Supreme Court of Iowa, after a full consideration of the subject, said, viz.: "Without pursuing the discussion of the subject further, we are agreed in the conclusion that a person contracting a debt cannot, by a contemporaneous and simple waiver of the benefit of the exemption laws, entitle the creditor, in case of failure to pay, to levy his execution against the defendant's objection, upon exempt property. Such an agreement is contrary to public policy, and will not be enforced." Curtis v. O'Brien, 20 Iowa, 376. In the case of Branch v. Tomlinson, 77 N. C. 388, a similar waiver incorporated in a promissory note was attempted to be enforced. The court said: "The agreement is to waive a right in contravention of State policy, which agreement this court cannot undertake to enforce." In Levicks v. Walker, 15 La. Ann. 245, a similar conclusion was reached. The Supreme Court of Florida, in Carter v. Carter, 20 Fla. 558, in a most able and elaborate opinion, held, viz.: "In view of the recognized policy of the States in enacting exemption laws and of the practically universal concurrence of the authorities on the identical question, our conclusion is that the 'waiver' of the benefit and protection of the exemption laws contained in this note is not valid to defeat a claim of exemption." See, also, Crawford v. Lockwood, 9 How. Pr. 547.

The result of our examination is that the main current of judicial enunciation is against the validity of such contracts. Possibly the only court out of line is that of Pennsylvania. Such contracts are also sustained in Alabama, but under the authority of an express statute. Brown v. Leitch, 60 Ala. 313. We think the weight of reason as well as authority is opposed to such stipulations. In our view, it is immaterial whether the contract is made by a single man or the head of a family. In either case it contravenes a sound public policy, and, if inforced, abrogates the exemption statutes. The judgment is affirmed.

NOTE.—VALIDITY OF CONTRACT TO WAIVE LEGAL PRIVILEGES.

Exemptions.—As the principal case shows, whether one can contract to waive in advance his exemptions under an execution is a disputed question. The better reason and the weight of authority would seem to support the doctrine that he cannot. Carter's Administrator v. Carter, 20 Fla. 558, 51 Amer. Rep. 618; Kneette v. Newcomb, 22 N. Y. 250, 78 Amer. Dec. 186; Recht v. Kelly, 82 Ill. 147, 25 Amer. Rep. 310; Branch v. Tomlinson. 77 N. Car. 388; Levicks v. Walker, 15 La. Ann. 245 Moxley v. Ragan, 10 Bush (Ky.), 156, 19 Amer. Rep. 61; Maloney v. Newton, 85 Ind. 565. To the contrary are the following cases: Bowman v. Smiley, 31 Pa. St. 225, 72 Amer. Dec. 738, and note 741; Case v. Dunmore, 23 Pa. St. 94; Brown v. Leitch, 60 Ala. 313; Hosington v. Huff (under special statute), 24 Kan. 793.

Statute of Limitations.—In regard to agreemen not to plead the statute of limitations there is much

contradiction of authority on every point involved. Such agreements are usually held to be binding if supported by a good consideration (13 Amer. & Eng. Encyclopædia of Law 717), and the court will sometimes find a consideration in forbearance to sue on account of such promise (Gardner v. McMahon, 3 Q. B. 561), or will dispense with the necessity of a consideration on the theory of estoppel. Kellogg v. Dickinson, 147 Mass. 432; Warren v. Walker, 23 Me. 453; Quick v. Corlies, 39 N. J. Law, 11; Randon v. Toby, 11 How. (U. S.) 493. But see *contra*, Shapley v. Abbott, 42 N. Y. 443. There is a tendency, however, to overthrow such agreements entirely as subversive of a wholesome statute and contrary to public policy. Crane v. French, 38 Miss. 503; Hodgdon v. Chase, 32 Me. 169; Cowart v. Perrine, 21 N. J. Eq. 101; Green v. Coos Bay Wagon Road Co., 23 Fed. Rep. 67; Kellogg v. Dickinson, 147 Mass. 432. It is generally agreed, however, that whether or not such promises are valid as contracts they can operate as acknowledgments or new promise. Jordan v. Jordan, 85 Tenn. 561; Bacchus v. Peters, 85 Tenn. 678; Burton v. Sterns, 24 Vt. 131.

Equity of Redemption.—It is universally held that a contract to waive the equity of redemption in mortgaged property is inoperative and void, for it is conclusively assumed that the necessities of the debtor have forced him to make the concession and the court will protect him against such agreement by pronouncing it void. 13 Amer. & Eng. Encyclopædia of Law, p. 827; Henry v. Davis, 7 Johns. (N. Y.) Ch. 42; Clark v. Condit, 18 N. J. Eq. 458; Pierce v. Robinson, 13 Cal. 116; Pritchard v. Elton, 38 Conn. 434. And any provisions in the mortgage giving the mortgagee advantages not properly belonging to the contract of mortgage will likewise be held inoperative. Comyns v. Comyns, 5 Ir. Eq. 225; Barrett v. Hartley, L. R. 2 Eq. 789.

Servant's Remedy Against Master for Injuries.—The decided weight of authority in this country sustains the proposition that a contract whereby an employee agrees in advance to relieve his employer from liability for injuries resulting from the latter's negligence is void as against public policy. Lawson on Contracts, § 336; Cook v. R. R. Co., 72 Ga. 48; Kan. Pac. R. R. Co. v. Peavey, 29 Kan. 169, 44 Amer. Rep. 630; Lake Shore, etc. R. R. Co. v. Spangler, 44 Ohio St. 471; Little Rock & Fort Smith Ry. Co. v. Eubanks, 48 Kan. 460, 3 Amer. State Rep. 245 with exhaustive note on the subject.

Agreement to Oust Courts of Jurisdiction.—The doctrine that parties cannot by any agreement entered into and by them control the courts of justice or effectually oust the courts of the jurisdiction which has been conferred upon them, is well sustained by authority. Hobbs v. Manhattan Ins. Co., 56 Me. 417, 96 Am. Dec. 472. Thus, although arbitration is required both by the courts of England and of this country, as a legitimate means of settling disputes, yet an agreement to submit to arbitration will not be held valid either in law or in equity when its effect is to oust the court of jurisdiction. Pearl v. Harris, 121 Mass. 390; Commercial Union Ins. Co. v. Hocking, 115 Pa. St. 407. And where a policy of insurance provides that the whole matter in controversy between the parties, including the right to recover at all, shall be submitted to arbitration, the condition is void, since its effect is to oust the courts of their legitimate jurisdiction, which the parties cannot do. Rowe v. Wilson, 97 Mass. 163; Insurance Co. v. Morse, 20 Wall. 445. To the same effect is Utter v. Travelers' Ins. Co., 65 Mich. 545, 8 Am. St. Rep. 913, with exhaustive note on the subject. In that case it was held that the courts will not permit the course of justice upon a trial before them to be stipulated or contracted in such manner as to defeat the ends to be subserved by such trial. It has accordingly been held that a stipulation in a policy of insurance providing that no suit shall be brought thereon unless in the county where the insurance company is established, is not binding on the insured. Nute v. Hamilton Mut. Ins. Co., 6 Gray, 174. The same is true of a stipulation in a policy of insurance whereby the insured waives the right to bring suit upon the policy except in the courts of the State incorporating the company. Richard v. Manhattan Life Ins. Co., 51 Mo. 518. So, of a stipulation whereby the insured waives the right to have the case removed to the Federal Court. Insurance Co. v. Morse, 20 Wall. 445. Those decisions are based upon the principle that every citizen is entitled to resort to all the courts of the country and to invoke the protection which all the laws of all those courts may afford him, and he cannot bind himself in advance by an agreement to forfeit his right at all times and on all occasions whenever the case may be presented. The law and not the contract prescribes the remedy and parties have no more right to enter into stipulations against and resort to the courts for their remedy in a given case than they have to provide the remedies prohibited by law. Such stipulations assume to divest the courts of their established jurisdictions and as conditions precedent to an appeal to the courts they are void (Stephenson v. Insurance Co., 54 Me. 70), not, however, upon consideration of public policy alone, but as Chief Justice Shaw, in Nute v. Hamilton Mut. Ins. Co., 6 Gray, 174, says, "the greatest inconvenience would result in requiring courts and juries to apply different rules of law to different cases in the conduct of suits in matters relating mainly to the remedy according to the stipulations of parties in forming and diversifying their contracts in regard to remedies." See 33 Cent. L. J., 168, article on "Agreement to Arbitrate as Conditions Precedent to Maintaining Suits."

CORRESPONDENCE.

CALIFORNIA INSOLVENT ACT.

To the Editor of the Central Law Journal:

In view of the recent enactment by the legislature of the State of California of a new act, which, according to its initial section, "shall be known and may be cited as the Insolvent Act of Eighteen Hundred and Ninety-five," a brief review of the same and its substantial differences from the act which it supersedes may not be uninteresting or unprofitable to the profession. It provides, as did the Act of 1880, for both voluntary and involuntary proceedings, and its provisions are contained in ten articles and seventy-two sections. The first change, apart from the nomenclature of the act itself, appears in Article II, Sections 3 and 4, which sections, after providing generally for what the schedules and inventory filed by the voluntary petitioner must contain, adds thereto "also, an outline of the facts touching any liability, directly or indirectly, in the nature of any right of action against the insolvent by any one;" in other words, requiring the debtor to state facts upon which a claim for damages may be predicated.

Section 5 containing the form of the debtor's oat

repeats the above in similar language, also that said schedules and inventory contain "an outline of the facts touching all rights of action in any form against any one."

Section 6 of the Act of 1880, provided generally that upon the adjudication the sheriff of the county should take immediate possession as receiver, receiving reasonable compensation as such, and should hold the property or moneys received from the sale thereof until the election of an assignee held "not less than 30 days from the making of said order." The Act of 1895 provides that the sheriff shall take possession of the estate until the appointment of an assignee, "which shall not be less than 8 nor more than 10 days from the date of the order," and shall be allowed and paid as compensation for his services the same expenses and fees as would by law be collectible, if the property had been levied upon and safely kept under attachment."

Section 8 is entirely new. It provides that no claim shall be entitled to vote at the election of an assignee unless filed 2 days prior to the time appointed for such election; that any person interested may file exceptions to the legality or good faith of any claim by verified specifications to be filed at least one day before the time appointed for the election; that such exceptions shall be heard and disposed of "on affidavit or other evidence in a summary manner;" that the decision of the court, however, should not be conclusive upon the right of the party to participate in the assets, "such right being subject to the laws of the State providing for the establishment of claims against the estate of insolvents in case of dispute." That "no creditor or claimant, who holds any mortgage, pledge, or lien of any kind whatever, as security for the payment of his claim, shall be permitted to vote any part of his secured claim in the election of assignee, unless he shall first have the value of such security fixed as provided in section 48 of this act, or surrender to the sheriff or receiver of the estate of the insolvent, if any receiver, all such property so mortgaged or pledged, or assign such lien to such receiver, or sheriff, such surrender or assignment of security or lien to be for the benefit of all creditors of the estate of the insolvent. The value of such security, if fixed by the court, shall be so fixed at least one day before the day appointed for the election of an assignee; in which event the claimant may prove his demand, as provided in this section, for any unsecured balance, subject to the same exceptions as all other claims."

Article III section 9, providing for involuntary proceedings, provides that a condition of insolvency may be (among other things) predicated upon the fact of the debtor's allowing his property to remain under attachment or legal process 3 days. The statute of 1880 named 4 days as the period.

Section 11 provides in more detail than its parallel section of the previous act for the procedure in involuntary proceedings regulating service by publication, where the debtor resides out of the State, conceals himself, or cannot be found.

Section 12 reduces from 10 to 5 days the time within which debtor shall answer the petition filed against him after overruling of demurrer.

Section 13 provides a specific time (not to exceed 3 days) within which the debtor in involuntary proceedings must file his verified schedules and inventory after he has been adjudged insolvent; the Act of 1880 left the time discretionary with the court. The section further particularly regulates the subsequent procedure relative to the election of an assignee, in accordance with section 6; the Act of 1880 providing only in general terms and the exact procedure having always been a subject of much doubt and conflict.

Sections 16, 17, 18 are added by the Act of 1895. Section 16 provides that where the debtor in involuntary proceedings resides out of the State, conceals himself, or cannot be found, or is a foreign corporation having no agent within the State upon whom service can be made, the petitioning creditors, on presenting the affidavits requisite to procure an order of publication and presenting a bond in double the aggregate sum of their claim, shall be entitled to an order directing the sheriff to take a sufficient amount of property of the debtor to satisfy the demands of the petitioning creditors and the costs.

Section 17 provides that when the property so taken does not exhaust the debtor's assets, upon similar procedure further property may be taken, all the property so taken to be held for the benefit of all creditors whose claims shall be proved. The section further provides that in the case of an appeal by the petitioners or debtor from the decision of the court upon the final hearing of the petition for the order of adjudication, the appellant shall give bonds in a sum double the amount of the value of the property in controversy. It provides also for exception to sureties on any bond.

Section 18 provides for a sale of the property in controversy under the previous sections when the best interests of the estate will be subserved thereby and the deposit of the proceeds in court.

Article IV regulates generally the rights and duties of assignees, and section 19 modifies the similar provision of the previous act by omitting the requirement that the assignee shall be a resident of the county where the insolvent resides or where he has carried on his business.

Section 21 (article IV) provides, in addition to the language of the Act of 1880, "whenever such assignment (*i. e.*, the assignment to the duly elected and qualified assignee) shall dissolve an attachment as herein provided, it shall also vacate any judgment made or entered, and dissolve and set aside any execution levied in any action or proceeding against the debtor commenced subsequently to the action in which the attachment is dissolved."

Section 23 requires the assignee to prepare and file schedules and inventory within one month after his election, when the debtor has neglected so to do, and to mail notices to creditors to prove their demands.

Section 31 provides for the compromise of rights of action in favor of the insolvent.

Section 32 additionally provides that where one and the same person have acted as receiver and assignee any compensation allowed to him as receiver shall be deducted from the compensation to which he otherwise would be entitled as assignee.

Section 33 requires that 3 months after appointment, the assignee shall file his account, and provides for notice by mail to the creditors. Under the provision of the Act of 1880, no notice was required except on the presentation of final account. The section further requires the assignee to file his final account within one year from date of adjudication unless the court, after notice to creditors, shall grant further time upon a satisfactory showing.

Article V provides for the insolvency proceedings by or against partnerships and corporations, and section 39 thereunder adds the words herein italicized: "Two or more persons, who are partners in business *or the surviving partner of any firm* may be adjudged insolvent," and also appends the following: "And no

order of adjudication shall be made in said proceedings until after the hearing of said order to show cause; provided, that in case of proceedings by or against surviving partners as such, only the partnership interest of deceased partners shall be subject to the control of the court in the insolvency proceeding; but the surviving partner, assignee, or creditors may pursue the property of the deceased partners in the court having jurisdiction thereof in probate proceedings."

Under the provisions of article VII, regulating discharge, section 53, providing in what cases a discharge shall not be granted, adds "or if insolvency proceeding in which he could have applied for a discharge are pending by or against him in the Superior Court of any other county or city and county in the State."

Section 67 (Article X) provides in what cases a receiver may be appointed. The Act of 1880 as originally in force, provided for receiverships, but under an amendment of 1891 the section was repealed. The present act provides that a receiver may be appointed in voluntary or involuntary proceedings, when by the verified petition of a creditor it appears that it is necessary to recover assets of the insolvent that have been "pledged, mortgaged, transferred, assigned, conveyed or seized on legal process" contrary to the provisions of section 59 of the act (covering fraudulent preference and transfers).

In Section 68, the provision providing for an appeal in contempt proceedings is omitted, having been declared unconstitutional (*Ex parte* Clancy, 90 Cal. 533).

Section 70 governing dismissals of proceedings requires 10 days' notice of such application for dismissal to be given creditors in the same manner as notice of election of assignee. The prior enactment permitted *ex parte* dismissals prior to adjudication.

The above comprises in the main the changes made, at least all the changes in which attorneys in other States would be interested. The act remedies many deficiencies in the previous law and particularizes procedure which was before a matter of uncertainty. It is designed to lessen the expenses incident to the proceeding and to protect the assets of the estate in the interest of creditors. It goes into effect May 26th, 1895.

N. H. CASTLE.

San Jose, Cal.

JETSAM AND FLOTSAM.

MENTAL ANGUISH AN ELEMENT OF DAMAGES.

We are surprised to find that so conservative a court as the Supreme Court of Iowa, should, after full consideration, have adopted the Texas rule allowing damages for mental suffering, as shown by the report of the case of Mentzer v. Western Union Telegraph Co., 62 N. W. Rep. 1. This question had been variously decided by the different courts of the country, but up to this time had been an open question in the State of Iowa. All the cases on both sides of the question, including announcements of text writers, were cited by the court. It was admitted that the general rule which had come down to us from England, is that mental anguish and suffering, resulting from mere anxiety, unaccompanied with injury to the person, cannot be made the basis of an action for damages, but the court found an exception to the rule, in the fact, that the telegraph as a means of conveying intelligence is comparatively a new invention, and that the general rule referred to was adopted long before the electric current was "harnessed" and made subservient to the will of man. The court thought that one of the crowning glories of the common law, is its elasticity and adaptability to new conditions and new states of facts. It has grown with civilization and kept pace with the march of events, so that it is as virile to-day, in our advanced state of civilization as it was, when the race was emerging from the dark ages of the past. Should it ever fail to be adjustable to the new conditions which age and experience bring, then its usefulness is over, and a new social compact must be entered into. The court denied the proposition involved in the contention, that the rule opened up a vast and fruitful field for speculative litigation.

The opinion of the court is a strong presentation of the question, and forced the admission of the dissenting judge, that under the opposite rule contended for, no adequate compensation is possible in this class of cases, but as the rule is of long standing, it is not sufficient reason for abrogating the rule. The question is properly one for legislative action, wherein the application of the rule may be definitely fixed.

It may be said that the Texas rule has thus gained an important ally in the judgment of the Supreme Court of Iowa.—*The National Corporation Reporter.*

LIBEL BY EFFIGY.

The London newspapers last month contained accounts of the case of Monson v. Madame Tussaud & Sons (Limited), suit for libel which forms the last act in a *cause celebre*. Mr. John Alfred Monson, as everybody knows, is the gentleman who figured as defendant in the sensational murder trial in Scotland a year ago, the charge being that he killed his pupil, Cecil Hambrough, while the two were on a hunting trip together. It appears that after his escape from that ordeal, with the ungracious verdict of "Not Proven," and after the failure of his suit to recover the insurance on the life of the very man he was charged with having murdered, the defendants, who are the proprietors of Tussaud's well known wax-works show, thought him a suitable subject for a wax figure in their establishment. Monson's own hunting suit and gun were procured to dress up the figure, and the whole was set off by a back ground representing the Scottish moor where the shooting occurred. According to the defendant's story, Monson sold them the clothes and gun for this very purpose; but however, that may be, no sooner was the show well started than Monson brought his action for libel, the *innuendo* being that the defendants, by the exhibition of the effigy, meant that the plaintiff was a "notorious person connected with a tragedy that remained a mystery in a way that was discreditable." It is not clear why an *innuendo* that the defendants meant that Monson was a murderer would not have been proper, nor why the *innuendo* actually alleged the defendants could not have pleaded truth.

The case well illustrates the freedom with which English judges express there opinion on the facts at issue. The Lord Chief Justice, in summing up, asked the jury if they could have any doubt that the effigy was a libel, and on the question of damages said, in effect, that Monson was a fraud, a blackguard, and a fabricator, whereupon the jury at once returned a verdict for the plaintiff, damages one farthing. The distinction between a binding instruction and such unequivocal remarks as these seems a little shadowy, even making allowance for the English practice of commenting on the evidence. The Lord Chief Justice prefaced his charge with the observation that there

was no class of cases in which the functions of the judge were more limited, and that the jury were the sole judges of whether the particular matter complained of was or was not a libel. They may have been, but they certainly received from the bench a significant hint of what was expected of them. The American practice of omitting all comment on the evidence is assuredly more in keeping with the general rule that questions of fact are for the jury, though doubtless there is much to be said from a utilitarian point of view for the sort of thing illustrated in this case.—*Harvard Law Review.*

BOOK REVIEWS.

BRADNER ON EVIDENCE.

In our recent review of Bradner on Evidence (40 Cent. L. J. 390) an error in the proof reading caused us to state the size of the book to be 180 pages, whereas in fact the book contains 680 pages, printed and bound in the best law style. Published by Messrs. Callaghan & Co., Chicago, Ill.

BOOKS RECEIVED.

The Road Rights and Liabilities of Wheelmen with table of contents and list of cases. By George B. Clementson of the Wisconsin Bar. Chicago, Callaghan & Company, 1895.

Commentaries on the Law of Private Corporations. By Seymour D. Thompson, LL. D., in Six Volumes. Vols. 1, 2 and 3. San Francisco: Bancroft-Whitney Company, 1895.

Reprint of Ancient Masonic Rolls of Constitutions, Copied Exactly from the Original Mss. in the Possession of The York Lodge No. 236, with an Appendix by James B. Bradwell, of 110 pages, Containing 50 Half-tone Illustrations of Masonic Scenes in York, and Portraits of Prominent Members of Ancient Ebor Preceptory No. 101, etc., etc. Chicago: Chicago Legal News Company. 1895.

HUMORS OF THE LAW.

A man accused of arson admitted his guilt to one of the jurors, an Irishman—the other eleven being, fortunately for him, his friends—and promised him $500 to secure a verdict in the second degree. "Well," he said, to the Irishman, when the jury had come in with a verdict in the second degree, "did you have a hard time bringing them around?" "Indade oi did," Pat replied, with a weary shake of his head as an earnest of the labor he had. "Iviry one of them other fellows wanted to vote for an acquittal."

"I'm afraid," said a rural justice, "that I shall be compelled to fine you $10 and costs."

"But, your honor, the evidence proves that I am innocent."

"I know it," replied the justice; "but, my friend, I've got a family to support."

The Chicago judge who has recently decided that a pickpocket is not punishable for being caught with his hand in another man's pocket because there was nothing in the pocket to steal was remarkably considerate after all. He might have ordered the man whose pockets made all the trouble under arrest for false pretenses.

The following is the draft of a recent indictment returned by a Kentucky grand jury:

"Lawrence Criminal Court.

Commonwealth of Kentucky against——Defendant.——Indictment. The grand jury of Lawrence County in the name and by the authority of the commonwealth of Kentucky, accuse——of the offense of malicious mischief, committed as follows: The said ——, on the—day of——A. D. 18—, in the county and circuit aforesaid, did unlawfully, willfully and maliciously kill and destroy one pig, the personal property of George Pigg, without the consent of said Pigg, the said pig being of value to the aforesaid George Pigg. The pig thus killed weighed about twenty-five pounds and was a mate to some other pigs that were owned by said George Pigg, which left George Pigg a pig less than he (said George Pigg) had of pigs, and thus ruthlessly tore said pig from the society of George Pigg's other pigs, against the peace and dignity of the commonwealth of Kentucky."

Some good stories are going the rounds concerning Sir Matthew Begbie, chief justice of British Columbia, who died the other day. Here is one of them: In 1883 a man was charged in Victoria with having killed another man with a sandbag, and in the face of the judge's summing up the jury brought in a verdict of not guilty. This annoyed the chief justice, who at once said: "Gentlemen of the jury, mind, that is your verdict, not mine. On your conscience will rest the stigma of returning such a disgraceful verdict. Many repetitions of such conduct as yours will make trial by jury a horrible farce and the city of Victoria a nest of immorality and crime. Go, I have nothing more to say to you." And then turning to the prisoner, the chief justice added: "You are discharged. Go and sandbag some of those jurymen; they deserve it."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE — Payment of Premiums.—A provision in an accident insurance policy issued to a railway employee that the assured shall leave in the hands of the paymaster of the railroad the installments of premium as agreed in an order of the assured on the paymaster to retain the installments out of the assured's wages, is complied with by leaving his dues in the hands of the paymaster without seeing that the latter turns them over to the company.—FIDELITY & CASUALTY CO. v. JOHNSON, Miss., 17 South. Rep. 2.

2. ACCORD AND SATISFACTION—Plea.—In a suit upon a note the answer alleged that, under an agreement between the payee and the defendant, whereby the defendant was to employ said payee at a stipulated salary, and to pay him at the close of his term of service, in full satisfaction of the note, a sum less than the amount due, defendant had so employed the payee at a salary larger than his work was worth, had tendered him the agreed sum in payment of the note when he quit work, and had since paid him more than the amount due on the note. It was not alleged that this last amount was paid or accepted in discharge of the note, nor that the agreement to accept less than the amount due on the note was made in consideration of the contract of employment: Held, that this was not a good plea of accord and satisfaction.—SHEETS v. RUSSELL, Ind., 40 N. E. Rep. 30.

3. ADMINISTRATION — Rights of Widow.—Under Code Civ. Proc. § 1365, the right of the widow to inherit is necessarily involved in the application for letters; and, in a hearing upon such application, a contract showing that the widow had released her inheritable interest in decedent's estate is admissible.—IN RE DAVIS' ESTATE, Cal., 39 Pac. Rep. 756.

4. ADMIRALTY — Jurisdiction.—Admiralty has no jurisdiction of a tort where the injury was received on the land, though the wrongful act was done on a ship.—PRICE v. THE BELL OF THE COAST, U. S. D. C. (La.), 66 Fed. Rep. 62.

5. APPEAL — Entering Appearance of Counsel.—An appeal will not be dismissed because the appearance of R in the appellate court as counsel for appellant, entered at the time the case was docketed, was unauthorized by him, and made without his knowledge, he having had charge of the case for appellant in the court below, and having taken no steps to sever his connection with the case by substituting other counsel, and his appearance having been entered by other counsel in good faith, and by virtue of a supposed authority from him, and other counsel having appeared, and taken charge of the case.—DAVIS v. WAKELEE, U. S. S. C., 15 S. C. Rep. 555.

6. APPEAL — Evidence not in Record.—The report of evidence taken by a master is not properly in the record where the evidence therein set out was not inserted in the record by a bill of exceptions or order of court, though an attempt was made to incorporate it by a direction "Here insert."—CITY OF NEW ALBANY v. IRON SUBSTRUCTURE CO., Ind., 40 N. E. Rep. 44.

7. ASSIGNMENT — Husband and Wife.—Where the words of an assignment to husband and wife leave in doubt the question of whether it is to them in severalty or as tenants by the entirety, the circumstances of the assignment and the character of the entire transaction may be considered.—IN RE YOUNG'S ESTATE, Pa., 31 Atl. Rep. 373.

8. ASSUMPSIT — Pleading.—In an action for public printing, a special answer to the whole complaint, alleging that plaintiffs are not entitled to recover at the rate fixed by law, but only for the reasonable value not to exceed a certain amount, without any offer of judgment as to the amount admitted to be recoverable, is bad on demurrer.—BOARD OF COM'RS OF MIAMI COUNTY v. WOODRING, Ind., 40 N. E. Rep. 31.

9. ATTACHMENT — Priority.—The lien of an attachment is prior to that of a chattel mortgage executed before, but not recorded until after, the issuance of the attachment, although the attaching creditor had actual knowledge of such mortgage, under Civ. Code, § 2957, providing that an unrecorded mortgage shall be void as against creditors and incumbrancers in good faith.—CARDENAS v. MILLER, Cal., 39 Pac. Rep. 783.

10. ATTORNEY — Disbarment.—Where the statute enumerates grounds for the disbarment of an attorney, no other grounds can be considered by the court.—IN RE EATON, N. Dak., 62 N. W. Rep. 597.

11. BANKING — Receipt of Proceeds of Discount.—A New York bank, at the request of S, the president of a Kansas bank, discounted a note made by S. By direction of S, it placed the proceeds of the note to the credit of the Kansas bank, and telegraphed S that it had done so. On the receipt of the telegram, S caused the proceeds of the note to be placed to his credit in the Kansas bank, and used the same: Held, that these acts constituted no evidence that the Kansas bank retained or enjoyed the proceeds of the discount, so as to estop it to question the authority of its officers to charge it with liability for the note.—FIRST NAT. BANK OF BURLINGAME v. HANOVER NAT. BANK OF NEW YORK, U. S. C. C. of App., 66 Fed. Rep. 34.

12. CARRIERS — Season-Ticket Holders.—In an action by a railroad company to recover the fare for a certain trip to which defendant claims he was entitled under his season ticket, a schedule of trains in force at the time is admissible to show that the train upon which defendant rode did not regularly stop at his destination, and that he did not have the right to ride on it under the contract in his season ticket.—NEW YORK & N. E. R. CO. v. FEELY, Mass., 40 N. E. Rep. 20.

13. CERTIORARI — Contempt — Review.—In contempt proceedings on the relation of a party to an action for inducing a witness to absent himself from the trial, a judgment refusing to compel the party in contempt to reimburse relator for loss incurred through his act of contempt, on the ground that relator incurred no loss, is not reviewable on *certiorari* by relator.—MONTGOMERY v. MUSKEGON BOOMING CO., Mich., 62 N. W. Rep. 561.

14. CHATTEL MORTGAGES.—That a chattel mortgage besides securing an actual indebtedness then due, embraces a sum as future advances, without that fact being disclosed on its face, does not alone render it fraudulent and void as to creditors.—BRACE v. BERDAN, Mich., 62 N. W. Rep. 568.

15. CONSTITUTIONAL LAW — Due Process of Law.—Comp. Laws Utah 1888, § 2087, providing that any person who drives a herd of certain animals over a highway constructed on a hillside shall be liable for certain damage done by such animals to the highway, does not deny the equal protection of the law, or deprive persons of property without due process of law, within the inhibition of Const. U. S. Amend. 14.—BRIM v. JONES, Utah, 39 Pac. Rep. 825.

16. CONSTITUTIONAL LAW—Obligation of Contracts.—A State statute giving to parishes and municipal corporations an additional and more summary remedy for enforcing against private corporations contract obligations in relation to the paving, repairing, reconstructing, or care of any street, highway, bridge, culvert, etc. (Act La. July 12, 1888), does not affect any substantial right of the other party, and is not unconstitutional, as impairing the obligation of contracts.—NEW ORLEANS, C. & L. R. CO. v. STATE OF LOUISIANA, U. S. S. C., 15 S. C. Rep. 581.

17. CONSTITUTIONAL LAW — Oleomargarine—Prohibition of Sale.—Act Va. March 1, 1892, entitled "An act to prevent the adulteration of butter and cheese, and the sale of the same, and preserve the public health," but in fact and substance prohibiting the sale of oleomargarine, is not a health law, but an interference with interstate commerce, and for that reason unconstitutional.—EX PARTE SCOTT, U. S. C. C. (Va.), 66 Fed. Rep. 45.

18. CONTRACT— Agreement between Joint Owners.—A verbal agreement between two parties holding a note payable to them jointly, that upon the death of either without living issue it shall belong to the survivor, is valid.—TAYLOR V. SMITH, N. Car., 21 S. E. Rep. 202.

19. CONTRACTS—Assignment of Half Interest.—An assignee of a half interest in a contract to purchase land, not expressly assuming liability for the payments therein provided for, incurs no personal liability to the vendor of the land, and therefore the owner of the other half interest in the contract cannot recover from the assignee any proportion of the payments made by him after the assignment, without the assignee's request.—LAVELLE V. GORDON, Mont., 39 Pac. Rep. 740.

20. CONTRACTS — Sale of Futures — Payment of Commissions.—In the absence of a statute making the purchase and sale of cotton futures absolutely void, a deed given to a broker in payment of commissions, and for advances made by him in carrying on such transactions, is not invalid, if he has no other interest in the transactions.—HUBBARD V. SAYRE, Ala., 17 South. Rep. 17.

21. CONTRACT — Damages.—In determining defendant's damages for plaintiff's failure to deliver a cotton gin as agreed, where defendant had testified that the gin would have earned a certain amount daily during the season had it been delivered, it was not error to refuse to permit him to state whether the neighborhood would have supplied him with sufficient cotton to have kept the gin running through the season.—DUNNINGTON V. FRICK CO., Ark., 30 S. W. Rep. 212.

22. CORPORATION — Expiration of Charter. — Under Rev. St. 1881, § 3012 (Rev. St. 1894, § 3435), providing for the appointment of a receiver for a corporation whose charter has expired upon application of any creditor or stockholder within three years after the expiration of the charter, such appointment may be made after such three years upon an application made within that time.—HATFIELD V. CUMMINGS, Ind., 40 N. E. Rep. 53.

23. CORPORATION—Stock—Delivery.—An indorsement of a certificate of mining stock by the holder thereof, at the request of the owner, to a third person, as security for his indorsement of the owner's notes, constitutes an actual delivery of the stock to the owner, and relieves the one indorsing it from liability for a conversion of the stock in not delivering it to the owner in person.—MCDONALD V. MACKINNON, Mich., 62 N. W. Rep. 560.

24. COUNTY—Support of Pauper.—One who takes a pauper from the county poor asylum when no reason exists for such removal, and cares for her without any contract with the county, cannot recover from the county for her board and nursing.—STATE V. GOULD, Ind., 40 N. E. Rep. 55.

25. CRIMINAL EVIDENCE — Murder — Dying Declarations.—Where the evidence is conflicting as to whether deceased was killed by a blow in the stomach inflicted by defendant with an ax, or whether defendant struck him only on the arm, and he died from other causes, dying declarations by deceased that defendant killed him by a blow with an ax in his stomach are admissible.—CLARK V. STATE, Ala., 17 South. Rep. 37.

26. CRIMINAL LAW—Review.— The mere filing of a motion to quash an indictment, on the ground that defendant was compelled to appear before the grand jury and testify against his will, is not ground for reversing a conviction, where the record fails to show that any issue was joined thereon. — SPEARMAN V. STATE, Tex., 30 S. W. Rep. 229.

27. CRIMINAL LAW — Sentence of Imprisonment.—A sentence of confinement in a certain prison is subject to conditions imposed by law, at the time of the sentence, for the transfer of prisoners from one prison to another.—RICH V. CHAMBERLAIN, Mich., 62 N. W. Rep. 584.

28. CRIMINAL LAW—Testimony of Accomplice.—Where an accomplice testifies for the State, a charge that his evidence, to warrant a conviction, must be corroborated, both as to its truth and the identity of the defendant, by other evidence which "satisfactorily amounts to the swearing of one credible witness, either in direct evidence or from facts and circumstances," is not prejudicial to defendant.—CLAPP V. STATE, Tenn., 30 S. W. Rep. 214.

29. CRIMINAL LAW — Testimony of Accomplice—Corroboration.—The circumstance of an accomplice having told the truth about irrelevant and immaterial things, which have no tendency to confirm the material parts of his testimony involving the guilt of the accused, is not admissible in evidence for the purpose of sustaining the veracity of such accomplice, notwithstanding a further basis has been laid for his impeachment.—STATE V. CALLAHAN, La., 17 South. Rep. 50.

30. CRIMINAL LAW — Theft.—Where a person with whom cotton has been intrusted to deposit with a warehouseman, after depositing it in his employer's name, procures receipts and samples of the cotton, with which he makes sales thereof, he does not acquire a sufficient possession of the property as to render him guilty of theft.—JOHNSON V. STATE, Tex., 30 S. W. Rep. 228.

31. CRIMINAL LAW—Theft—Confessions.—Although a conviction cannot be had where the *corpus delicti* rests alone upon the confession of defendant, yet when, in addition thereto, other facts tend to show that a crime was committed, and that defendant was connected therewith, the jury is justified in finding a verdict against him.—DUNN V. STATE, Tex., 30 S. W. Rep. 227.

32. CRIMINAL PRACTICE—Indictment—Waiver of Defects.—Under Cr. Prac. Act, § 217, providing that defendant, by failure to demur to an indictment, waives all defects therein, except that the court has no jurisdiction of the offense, and that the indictment does not state facts constituting an offense, an objection to an indictment on the latter ground cannot be raised for the first time on appeal.—STATE V. MALISH, Mont., 39 Pac. Rep. 789.

33. CRIMINAL PRACTICE—Trial—Opening Statement.—A statement in good faith by the prosecuting attorney, in his opening argument, that he expected to prove certain facts not followed up by proof, is not ground for reversal where he discovered on the trial that he could not substantiate the statement by proofs.—PEOPLE V. FOWLER, Mich., 62 N. W. Rep. 572.

34. DEDICATION OF LAND FOR PARK—Acceptance.—Plaintiff's grantor platted certain land, and on the map thereof, made and recorded at the instance of his agent, the land in dispute was laid out as a park, double the size of the surrounding squares, and marked "Public Grounds," and the street which, if extended, would have run through it, was marked "Park Avenue." Lots sold in the addition by the grantor were conveyed with reference to the map: Held that, though the grantor afterwards offered the land in suit to the State for a capitol site, its dedication to the city as a public square was complete.—EVANS V. BLANKENSHIP, Ariz., 39 Pac. Rep. 812.

35. DEED—Sheriffs' Deeds — Priorities. — Under Act 1885, ch. 147, providing that no conveyance of land shall be valid, as against purchasers for a valuable consideration from the donor or bargainor, but from the registration thereof, a sheriff's deed duly registered takes precedence of a similar deed which, though made first, was registered later.—HOOKER V. NICHOLS, N. Car., 21 S. E. Rep. 207.

36. DEPOSITIONS — Notice.—In the absence of any showing of prejudice, it is not error to refuse to suppress a deposition, taken in an another State on notice, because the notice did not locate the office of the notary before whom such deposition was to be taken by street and number.—MOORE v. BOOKER, N. Dak., 62 N. W. Rep. 607.

37. DIVORCE—Collusive Agreement.— An agreement between husband and wife, executed pending divorce proceedings, in regard to the division of their property and the custody of their children, based on the consideration that the husband withdraw his counter charges, and make no defense to the action, is void as against public policy.—LOVEREN v. LOVEREN, Cal., 39 Pac. Rep. 801.

38. DIVORCE—Division of Property.—In an action for divorce the court has no authority to make a division of lands between the parties which are held by them as tenants in the entirety.—ALEXANDER v. ALEXANDER, Ind., 40 N. E. Rep. 55.

39. DIVORCE—Marriage under Duress.—One is not entitled to a divorce on the ground that the marriage was contracted under duress, where the only evidence of duress is the fact that, having been arrested on the charge of seduction, he married defendant to avoid the prosecution.—COPELAND v. COPELAND, Va., 21 S. E. Rep. 241.

40. ESTOPPEL IN PAIS—Assignment of Judgment.—Where the owner of a judgment transfers the same by an unconditional assignment, but really for purposes of collection only, and the assignee fraudulently assigns it to an innocent purchaser, the principle of estoppel applies in favor of the latter, upon the ground that the real owner placed it in his assignee's power to commit the fraud.—BAKER v. WOOD, U. S. S. C., 15 S. C. Rep. 563.

41. FEDERAL CIRCUIT COURTS—Actions by Assignees.—A claim, founded on contract, to recover a sum of money out of a fund in the hands of a railroad company, is a "chose in action," within the meaning of that provision in the first section of the judiciary act (Act March 3, 1887, as corrected by Act Aug. 13, 1888), which denies to an assignee of a chose in action the right to sue in the federal courts if no action could have been maintained there in the absence of an assignment.—MEXICAN NAT. R. CO. v. DAVIDSON, U. S. S. C., 15 S. C. Rep. 563.

42. FEDERAL COURTS— Supreme Court—Original Jurisdiction.—In cases of original jurisdiction, it has been determined that the Supreme Court will frame its proceedings according to those which had been adopted in the English courts in similar cases, and that the rules of court in chancery should govern in conducting the case to a final issue; but the court is not bound to follow this practice when it would embarrass the case by unnecessary technicalities, or defeat the purposes of justice.—STATE OF CALIFORNIA v. SOUTHERN PAC. CO., U. S. S. C., 15 S. C. Rep. 591.

43. FRAUDS, STATUTE OF—Part Performance.—It is no defense to an action on a due bill given for the price of a leasehold interest sold to one who was already in possession, and thereafter remained in possession, that the contract of sale did not comply with the statute of frauds.—MCMAHAN v. JACOWAY, Ala., 17 South. Rep. 39.

44. FRAUDULENT CONVEYANCES—Action to Set Aside.—A trust deed executed by an insolvent to his wife, in consideration of one dollar and of lands belonging to her separate estate which she had previously conveyed to him, but which are grossly inadequate as a consideration, will be set aside, except to the extent of the value of such separate lands of the wife.—HULL v. WILLIAM DEERING & CO., Md., 31 Atl. Rep. 416.

45. GUARDIAN — Power to Sue.—A guardian cannot sue in a court, even of the United States, held in a State other than that in which he was appointed, except as authorized by the laws of the other State.—MORGAN v. POTTER, U. S. S. C., 15 S. C. Rep. 590.

46. HOMICIDE—Self-Defense.—In a trial for murder the wife of deceased testified that defendant came to her house to secure lodgings, and, while awaiting the husband's return, with her permission, he lay upon the bed; that deceased, finding him there, attacked defendant, and was killed by him in self-defense: Held, that this phase of the case should have been presented to the jury, and they instructed that defendant's act under such circumstances, would be justifiable.—FRANKLIN v. STATE, Tex., 30 S. W. Rep. 231.

47. HUSBAND AND WIFE — Allowance for Support.—The husband, after failure to pay or tender the sum stipulated in the agreement of separation between himself and wife to be paid for her maintenance, cannot set up such agreement as a bar to a proceeding for an allowance for her support, though the sum demanded by the wife before the commencement of the proceeding was larger than the sum stipulated in the agreement.—CRAM v. CRAM, N. Car., 21 S. E. Rep. 196.

48. HUSBAND AND WIFE — Exchange of Property.—A parol exchange by a husband and wife of chattels belonging to her, made prior to Act Feb. 28, 1887 (Code, § 2348), making such exchange valid, vested the title to the chattels exchanged for in the husband, and she cannot recover them from one who purchased them at an execution sale under a judgment against her husband.—COX v. BOYETT, Ala., 17 South. Rep. 26.

49. HUSBAND AND WIFE — Liability on Note.—In an action on a note signed by a husband and wife, where the evidence is insufficient to show that the money was advanced with the understanding on the part of the payee that it was for the benefit of the wife's separate estate, she is not liable on the note.—FISK v. MILLS, Mich., 62 N. W. Rep. 559.

50. INSURANCE — Action on Policy.—In an action on a fire insurance policy, a variance between the declaration and the evidence as to the date of the policy is not fatal, proofs of loss having been made within the time required.—LUM v. UNITED STATES FIRE INS. CO., Mich., 62 N. W. Rep. 562.

51. INSURANCE — Payment of Premiums.—The local agent and manager of a fire insurance company has no power to aver that the premiums on a policy issued by him shall be credited on account of rents due by him to the policy holder for offices rented for the company and rooms rented for himself.—SULLIVAN v. GERMANIA LIFE INS. CO., Mont., 39 Pac. Rep. 742.

52. INSURANCE — Waiver of Conditions.—Knowledge of the agent, who obtained the insurance acquired from the insured at the time of the application, that the latter was only a lessee of the property covered by the policy, is binding on the company with respect to any subsequent renewals of such policy through such agent, notwithstanding the policy provides for absolute ownership, and that no agent of the company shall have power to waive any condition therein.—HOME INS. CO. OF NEW YORK v. GIBSON, Miss., 17 South. Rep. 13.

53. INTOXICATING LIQUORS—Illegal Sale.—A complaint charging the illegal sale of intoxicating liquors by one "not being then and there a druggist," and alleging that such liquors were not "sold for chemical, scientific, mechanical, medicinal or sacramental purposes," and were "not proprietary patent medicines," is broad enough to show that the accused was not selling lawfully, as a druggist.—PEOPLE v. ALDRICH, Mich., 62 N. W. Rep. 570.

54. JUDGMENT — Collateral Attack.—An administrator's sale of land cannot be collaterally attacked on the grounds that complainants did not contest the probate proceedings for the sale because of their ignorance of their rights, and that the debt for which the land was sold was barred by limitation, and alleging fraud and collusion generally.—COBB v. GARNER, Ala., 17 South. Rep. 47.

55. LIMITATION OF ACTIONS—Joint Makers.—Payment made on a joint and several promissory note, executed and payable in Wyoming, by one of the two makers

thereof, does not operate to prevent the running of the statute of limitations of that State as to the other maker.—BERGMAN v. BLY, U. S. C. C. of App., 66 Fed. Rep. 40.

56. LIMITATION OF ACTIONS — Acknowledgment.—A request by the mortgagor to a third person to write to the mortgagee concerning a mortgage which he holds against the farm of the mortgagor, saying that he had made arrangements to pay it off, and telling him to produce it in person, or to send it to some friend, and in that case he would remit by check, is such an acknowledgment as to prevent the operation of the statute of limitations.—MILLER v. TEETER, N. J., 31 Atl. Rep. 394.

57. MALICIOUS PROSECUTION — Probable Cause.—An arrest for forging the owner's name to a transfer of certificates of stock is not justified by the testimony of the owner that he assigned the stock to a third person on his false representations, and that the name of the one arrested, which appears in the transfer as an assignee, was not mentioned, and he did not know at the time that he was transferring the stock to him.—THURBER v. EASTERN BUILDING & LOAN ASS'N, N. Car., 21 S. E. Rep. 193.

58. MARRIAGE PROMISE—Excessive Damages.—A contract to marry entered into between parties, one only of whom is qualified to make such a contract, is void.—EVE v. RODGERS, Ind., 40 N. E. Rep. 25.

59. MASTER AND SERVANT—Incompetency of Fellow-servant.—Where a servant, competent when employed, subsequently became habitually negligent, and his violation of his employer's rules caused the death of a fellow-servant, the work of the servant being of such a nature that his employer had no opportunity to learn of his misconduct, and no such misconduct being reported by his fellow-servants, who were under positive instruction to report all violations of the rules, the employer was not chargeable with negligence in failing to discover the servant's habitual misconduct, and in omitting to discharge him.—CAMERON v. NEW YORK CENT. & H. R. R. CO., N. Y., 40 N. E. Rep. 1.

60. MECHANIC'S LIEN—Bond of Owner.—A bond given by the owner of buildings upon which a notice of lien for materials has been filed, conditioned for the payment of any judgment that may be rendered against the property as provided by Laws 1885, ch. 342, § 24, subd. 6, takes the place of the property, and discharges and becomes the subject of the lien; and an action is maintainable thereon against all parties interested, including the sureties, without first foreclosing the lien upon the property.—MORTON v. TUCKER, N. Y., 40 N. E. Rep. 3.

61. MECHANIC'S LIEN — Pleading.—In an action by a subcontractor to foreclose a mechanic's lien, plaintiff must allege and prove that the materials were furnished expressly "for" defendant's building; but, although the complaint fails to aver such fact, it is not demurrable if it shows plaintiff entitled to a judgment for goods sold.—FARRELL v. LA FAYETTE LUMBER & MANUFACTURING CO., Ind., 40 N. E. Rep. 25.

62. MORTGAGE — Parol Evidence.—Where a mortgage describes the property mortgaged as "every article and thing in stock or in process of manufacture" in a shop, parol evidence that this description was intended to include the machinery, fixtures, and books of account used in the business is not admissible.—COOMBS v. PATTERSON, R. I., 31 Atl. Rep. 428.

63. MORTGAGE BY MARRIED WOMAN.—Under the act of 1887 providing that a mortgage by a married woman on her separate estate shall be a charge thereon whenever an intention to that effect is declared in the mortgage, such intention need not be set out in the mortgage if it was in fact executed by her for the benefit of her separate estate.—GIBSON v. HUTCHINS, S. Car., 21 S. E. Rep. 250.

64. MUNICIPAL CORPORATION — Negligence of Officer.—Where the charter of a city gives the board of aldermen power to elect street commissioners, but denies it the right to superintend and direct them, an assistant superintendent of streets, acting under such board of street commissioners, is not, by virtue of his office, an agent of the city, for whose negligence such city is liable.—MCCANN v. CITY OF WALTHAM, Mass., 40 N. E. Rep. 20.

65. MUNICIPAL CORPORATION—Opening Public Street.—Evidence to prove the market value of property assessed for benefits should be directed to the market value in the present condition of the property, and then to any increased value by opening the street; and the opinions of witnesses having knowledge of the subject and acquainted with the land are admissible to prove such value.—MAYOR, ETC., OF CITY OF BALTIMORE v. SMITH & SCHWARZ BRICK CO., Md., 31 Atl. Rep. 423.

66. MUNICIPAL CORPORATIONS—Public Improvements.—The fixing by board of city water commissioners, in specifications for work to be done, of a minimum price to be paid for labor, and the awarding of a contract on the basis of such specifications, is a violation of a statutory provision requiring such work to be awarded to the lowest responsible bidder, and void.—FRAME v. FELIX, Pa., 31 Atl. Rep. 375.

67. MUNICIPAL CORPORATION — Street Improvement—Special Assessment.—Where a city appropriates land for the purpose of widening a part of a street, and provides by ordinance that the costs and expenses of the appropriation shall be assessed by the foot front, upon the lots and lands abutting upon the part widened, and upon other lots and lands abutting upon the line of such street between certain designated points, such abutting lots and lands being declared by the council to be those which, in its opinion, will be specially benefited by the appropriation: Held, the assessment will be deemed to be on the foot front plan, as distinct from an assessment in proportion to the benefits that may result from the improvement, or according to the value of the property assessed, as provided by section 2264 of the Revised Statutes.—CITY OF CINCINNATI v. BATSCHE, Ohio, 40 N. E. Rep. 21.

68. NEGLIGENCE — Dangerous Premises.—A teamster who, after delivering goods at the back door of a store, as directed by the proprietor, starts through the rear part of the store for a receipt, and falls through an open trap-door, is not, as a matter of law, a trespasser, so as to prevent a recovery for the injuries received.—PELTON v. SCHMIDT, Mich., 62 N. W. Rep. 552.

69. NEGLIGENCE—Fall of Railroad Bridge.—Whether a railroad company has used proper efforts to discover hidden structural defects in one of the abutments of a bridge built by its predecessor, the evidence having shown that it had actual notice of structural defects in the opposite abutment of the same bridge, is a question for the jury.—BOGART v. DELAWARE, L. & W. R. CO., N. Y., 40 N. E. Rep. 17.

70. NEGOTIABLE INSTRUMENT—Note—Consideration.—A partner gave a note to a person to whose business the firm succeeded, and for five years made no demand for surrender, though a demand had been made on him for payment. A branch of the business was established without the payee's knowledge, and the maker's partner submitted to a judgment on a like note given by him: Held, sufficient to show that the note was given for the interest in the business.—BROWNING v. KEMPTON, N. J., 31 Atl. Rep. 380.

71. NEGOTIABLE INSTRUMENT — Indorsement and Transfer.—The fact that the indorsement of the payee is left uncanceled on a promissory note will not *ipso facto* prevent his recovery; but from his possession and production of the note it will be presumed that the note was not delivered under the indorsement, or that, if it was so delivered, it was taken up by him.—MIDDLETON v. GRIFFITH, N. J., 31 Atl. Rep. 405.

72. NEGOTIABLE INSTRUMENT — Liability of Surety on Note.—Where a surety signs a note on condition that the principal also signs it, which condition is known

to the payee, the surety is not liable thereon in case the principal fails to sign.—WILLIAMS v. LUTHER, Ky., 30 S. W. Rep. 199.

73. NEGOTIABLE INSTRUMENT — Note—Bona Fide Purchaser.—The maker of a note executed without any actual consideration passing at the time, but to enable the payee, by putting it in circulation, to raise money or pay an existing debt, has no right of set-off or counterclaim in an action on the note by an innocent purchaser for value.—CAROTHERS v. RICHARDS, Ky., 30 S. W. Rep. 211.

74. OFFICER — Retirement — Failure to Pay Over Funds.—Section 3977, Rev. St. 1887, providing that "any officer or person collecting or receiving any fines, forfeitures or other moneys and refusing to pay over the same as required by law, shall forfeit double the amount," with interest thereon, does not apply to a retiring treasurer of a school district who fails to pay over a general balance of moneys in his hands.—PEOPLE v. DOLAN, Wy., 39 Pac. Rep. 752.

75. PARTITION SALE — Payment.—An attempted payment of the bid at a partition sale, by making an entry of the amount of the purchase money to the credit of the commissioner who made the sale with one who agreed to advance the first installment of purchase money and become surety for the second installment, is not a compliance with the court's order, and where the money is not paid, and the surety afterwards becomes insolvent, there is a failure of consideration for a note and trust deed given by the purchaser to secure the surety.—BLYTHE v. HERNANDO BANK, Miss., 17 South. Rep. 4.

76. PARTNERSHIP — Power of Members.—A chose in action accruing to a partnership from a transaction in the ordinary course of its business may be transferred by a single member of the firm.—GERLI v. POIDEBARD SILK MANUF'G CO., N. J., 31 Atl. Rep. 401.

77. PARTNERSHIP BETWEEN HUSBAND AND WIFE — Assignment.—An assignment for the benefit of creditors of a banking firm composed of a husband and wife, executed by her in the partnership name, by the direction of the husband, and unconditionally devoting the entire partnership assets to the equal payment of the partnership debts, is valid; and such assets vest in the assignee, and are not subject to garnishment in a suit by a creditor of the firm.—BELSER v. TUSCUMBIA BANKING CO., Ala., 17 South. Rep. 40.

78. PRINCIPAL AND SURETY — Probate Judge.—The sureties on the official bond of the judge of probate are not liable for the payment of the penalty imposed on the judge under Code § 2318, for issuing a marriage license to an infant without its parents' consent.—JEFFREYS v. MALONE, Ala., 17 South. Rep. 21.

79. PROHIBITION — Jurisdiction.—Where a court has found, upon the facts, that a person was at the time of her death a resident within its jurisdiction, a writ of prohibition will not issue to prevent the execution of an order of such court to produce the will of the decedent.—STATE v. SUPERIOR COURT OF KING COUNTY, Wash., 39 Pac. Rep. 818.

80. QUIETING TITLE—Parties.—The United States is a necessary party to an action to remove a cloud from the title to lands, the right of recovery in which depends upon the validity of a government grant of the lands to a negro, pursuant to Act Cong. July 16, 1866, for the relief of freedmen, etc., where two of the questions involved and necessary to a complete determination are as to whether the manner in which the certificate of sale was obtained did not render it void, and whether such conveyance did not work a forfeiture of the grantee's rights to the United States as his grantor.—GREEN v. NIVER, S. Car., 21 S. E. Rep. 263.

81. RAILROAD COMPANY—Injury—Assumption of Risk.—An engineer on an engine used in shifting cars to a side-track assumes the risk of obvious defects in the engine and trestle, so as to preclude a recovery for his death, caused by his losing control of the engine, and its running at great speed onto a high trestle, and tearing up a stop block at the end, and being precipitated over the brow of a steep hill.—LOUISVILLE & N. R. CO. v. STUTTS, Ala., 17 South. Rep. 29.

82. RAILROAD COMPANY—Injury—Negligence.—When entering into the railway service in such a latitude, an employee assumes such risks as are usually and customarily incident to the falling of snow, the forming of ice, and the removal of the same from tracks and places where employees are required to work, when the removal or disposition thereof is done in a proper and reasonable manner, in the exercise of due and ordinary care for the safety of employees.—LAWSON v. TRUESDALE, Minn., 62 N. W. Rep. 546.

83. RAILROAD COMPANIES — Killing Live Stock.—The question whether an engineer negligently ran down horses which had escaped through a gate upon the track, or whether he did not, as testified to by him and the fireman, discover them until he was within 25 feet of them, and too late to avoid the accident, is for the jury, where sufficient to warrant an inference of knowledge of their presence on the part of the engineer and fireman.—GRANBY v. MICHIGAN CENT. R. CO., Mich., 62 N. W. Rep. 580.

84. RAILROAD COMPANY—Negligence.—In inspecting a detached car at night, one of the inspectors worked underneath the car, while the other held a torch: Held, that the latter's negligence in not looking for approaching switch engines could not be imputed to the former, so as to relieve the switching company from liability for killing him by negligently running into the detached car in coupling it with another.—ABBITT v. LAKE ERIE & W. R. CO., Ind., 40 N. E. Rep. 40.

85. RAILROAD COMPANY — Negligence.—In an action for personal injuries, where the plaintiff's recovery depends upon his establishing the willful negligence charged against the defendant, and no evidence of such negligence is presented, but it is shown that the injury was caused solely by the plaintiff's fault, it is not error to dismiss plaintiff's suit by a peremptory instruction.—SMITH v. LOUISVILLE & N. R. CO., Ky., 30 S. W. Rep. 209.

86. RAILROAD COMPANY—Negligence.— Where decedent was killed by a train while attempting, without looking or listening for a train, to cross the track at a place where people were in the known habit of crossing, and he was not seen by those in charge of the engine until it was too late for him to avoid the accident, the company is not liable, though no signal was given for the crossing, the whistle having been blown before for a station.—JOHNSON'S ADM'R v. CHESAPEAKE & O. RY. CO., Va., 21 S. E. Rep. 238.

87. RAILROAD COMPANIES — Stock Killing.—In an action against a railroad company for negligently killing an animal at a private crossing, put in by the defendant for the plaintiff's use in passing from one part of his farm to another, the question of negligence is usually a question for the jury: Held, under the evidence in this case, that the question of negligence was properly submitted to the jury.—BISHOP v. CHICAGO, M. & ST. P. RY. CO., N. Dak., 62 N. W. Rep. 605.

88. RAILROAD EMPLOYEE — Personal Injury.—A person regularly employed by a railroad company as a bridge carpenter, but engaged at the time of his injury in loading timbers on a car for transportation to another point on the company's road, is entitled to the benefits of Gen. St. Kan. 1889, ch. 23, § 93, making every railroad company liable for damages to one of its employees through the negligence of a co-employee.—CHICAGO, K. & W. R. CO. v. PONTIUS, U. S. S. C., 15 S. C. Rep. 595.

89. REAL ESTATE BROKER — Commissions.—Where agents employed to sell land within a certain time, after the expiration of the time, at the request of the owner and on a promise by him that he will pay them a commission if a sale is effected, irrespective of the purchase price, and though the sale be made directly by him, write to a prospective purchaser, with whom

they have been in correspondence, offering the land for a certain price, and the purchaser, as a result of the letter, purchases the land directly from the owner, the agents are entitled to their commissions.—HOLLAND v. HOWARD, Ala., 17 South. Rep. 35.

90. RECEIVER—Collateral Attack.—Where a receiver is appointed for a dissolved partnership to take possession of the firm assets, and convert them into cash to pay the creditors, his right to do so cannot be questioned in an action by him for an order authorizing the sale of such assets to pay the firm's debts.—BOOHER v. PERRILL, Ind., 40 N. E. Rep. 86.

91. RECEIVERS — Conflicting Appointments by State and Federal Courts.—The question whether, as between courts of concurrent jurisdiction, when proceedings have been commenced in one with a view to the appointment of a receiver, and are proceeding in a due and orderly way, the other court can, in a suit subsequently commenced, by reason of its speedier modes of procedure, seize the property, and thus prevent the first court from asserting its right to possession, is a question which can fairly arise only in a case in which process has been served, and in which the express object of the bill, or at least one express object, is the appointment of a receiver, and where possession by him is necessary for the full accomplishment of the purposes set forth in the bill.—SHIELDS v. COLEMAN, U. S. S. C., 15 S. C. Rep. 570.

92. RECEIVERS — Corporation.—Officers of a corporation, appointed its receivers because its business was complicated, intricate, and widely extended, with millions of dollars invested upon small mortgages scattered through several States, will not be removed from the receivership because of former imprudent investments, and other mismanagement of the business of the corporation, as its officers, no fraudulent practices which would disqualify them being shown.—FOWLER v. JARVIS CONKLIN MORTGAGE TRUST CO., U. S. C. C. (N. Y.), 66 Fed. Rep. 14.

93. RECEIVER — Judgment Creditor.—To entitle a judgment creditor to an order appointing a receiver of his debtor's property it must be made to appear that the creditor has in good faith exhausted his remedies at law; and to that end it must appear, unless special circumstances are shown to excuse it, that execution has been issued upon the judgment to the sheriff of the county of defendant's residence, and been returned unsatisfied in whole or in part.—MINKLER v. UNITED STATES SHEEP CO., N. Dak., 62 N. W. Rep. 594.

94. RECEIVERS — Railway Reorganization Scheme.—It is not improper for the receiver of a railway corporation to promote any reorganization scheme which offers the prospect of securing the largest measure of protection to all persons concerned in or connected with the property and assets in the custody of the court, but in so doing he must not promote one interest at the expense of others equally entitled to the court's protection.—CLARKE v. CENTRAL RAILROAD & BANKING CO. OF GEORGIA, U. S. C. C. (Ga.), 66 Fed. Rep. 16.

95. RECOVERY OF LEGACY — Land.—In an action to recover the amount of a legacy from two devisees upon whom such legacy was, by the will, made a specific charge in case that part of the estate not otherwise disposed of should be insufficient to pay it, a complaint setting forth the terms of the will, and alleging that there are no assets in the hands of the executor, or that can come into his hands, for the payment of the legacy, is not defective because it fails to allege that the estate is fully settled and the executor discharged.—JENNINGS v. STURDEVANT, Ind., 40 N. E. Rep. 61.

96. RELEASE — Consideration — Fraud.—A railroad company procured a release from an injured passenger in full settlement of all claims for personal injuries and loss of property upon the payment of a sum less in amount than the value of the property destroyed: Held, in an action for damages, that the court properly refused to direct a verdict for the defendant, where there was evidence tending to show that the receipt was procured by fraud, and that at the time it was signed the plaintiff was incapable of transacting any important business or exercising an intelligent judgment on any subject.—ST. LOUIS, I. M. & S. RY. CO. v. PHILLIPS, U. S. C. C. OF APP., 63 Fed. Rep. 35.

97. RELIGIOUS SOCIETY — Churches — Expulsion of Member.—Courts of law have not jurisdiction to review the action of a church in expelling a member.—DEES v. MOSS POINT BAPTIST CHURCH, Miss., 17 South. Rep. 1.

98. REMOVAL OF CAUSES — Averments of Citizenship.—An averment, in a petition for removal, that one of the parties was a "resident" of a State named, is not equivalent to an averment of his citizenship, and will not support the jurisdiction of the federal court.—NEEL v. PENNSYLVANIA CO., U. S. S. C., 15 S. C. Rep. 589.

99. RES JUDICATA — Different Cause of Action.—An action against a receiver for failure to collect a judgment out of certain bonds and other property, alleged to have belonged to the judgment debtor, is not barred by a judgment in a former action by plaintiff, to which the receiver was not a party, in which it was adjudged that the debtor was not the owner of the bonds, and in which the other property was not involved.—TURNER v. ROSENTHAL, N. Car., 21 S. E. Rep. 198.

100. SALE — Breach of Warranty—Damages.—A purchaser of a brick drying machine, sued on a note for the price, cannot recoup for prospective profits which he claims he might have made if the capacity of the machine had been as warranted; as such damages are too remote, and not within the reasonable contemplation of the parties.—MOULTHROP v. HYETT, Ala., 17 South. Rep. 32.

101. SALE — Implied Warranty — Fitness for Purchaser's Purpose.—Plaintiff, the manufacturer, agreed to sell to H, and the latter purchased, a certain quantity of bricks, to be "of the grade known as 'common,'" which is a well-recognized kind or description in the market, "to be of good quality and equal to sample sent:" Held, in the absence of a finding as to a sale by sample, that there was an implied condition of the contract, which was in writing, that the bricks should conform to the description, be of good material, and well made, according to the description, but none that they would answer the purpose for which they were purchased.—WISCONSIN RED PRESSED BRICK CO. v. HURD REFRIGERATOR CO., Minn., 62 N. W. Rep. 550.

102. SALE — Rescission for Fraud.—Fraudulent representations in the statement required by 3 How. Ann. St. § 4161b1, to be filed by a corporation to prevent personal liability to its officers for its debts, and which is made the basis of a report by a commercial agency as to the corporation's financial standing, on the faith of which report goods are sold the corporation on credit, entitles the seller to rescind the sale for fraud.—SILBERMAN v. MUNROE, Mich., 62 N. W. Rep. 555.

103. SALE — When Title Passes—Evidence.—In an action for the price of goods sold, the evidence showed that defendant ordered goods from plaintiff on board cars at plaintiff's place of business. Plaintiff shipped the goods, taking the bill of lading in his own name, which he sent to a bank in defendant's town, attached to a sight draft on defendant for collection. Defendant refused to accept the goods: Held, that the evidence was insufficient to overcome the presumption that plaintiff retained title to the goods after shipment, arising from his taking the bill of lading in his own name.—WILLMAN MERCANTILE CO. v. FUSSY, Mont., 39 Pac. Rep. 738.

104. SUBROGATION — Incumbrancers.—When a husband conveys land subject to incumbrances, without his wife joining in the deed, and the grantee, who has assumed the incumbrances, pays them off without knowledge of the wife's inchoate one-third interest, he is entitled, as against the wife's claim, to be subro-

gated to the rights of the holders of the incumbrances. —FOWLER v. MAUS, Ind., 40 N. E. Rep. 56.

105. TAXATION—Manufacturing Corporation.—A corporation engaged in mixing teas, and in roasting, mixing, and grinding coffee, is not a "manufacturing corporation," so as to be exempt from taxation, under Laws 1880, ch. 542, as amended by Laws 1881, ch. 361.—PEOPLE v. ROBERTS, N. Y., 40 N. E. Rep. 7.

106. TAXATION—Exemptions—Railroad Companies.—Act April 24, 1882, incorporating a railroad company, and clothing it "with all the rights, privileges, and powers" embraced in the charter of another railroad company named, does not confer upon it the immunity from taxation which was granted to such other company by its charter.—NASHVILLE, C. & ST. L. R. CO. v. COMMONWEALTH, Ky., 30 S. W. Rep. 200.

107. TAXATION — License Tax on Trade.—The word "trade," where it is used in defining the power to tax, includes an employment or business for gain or profit. —STATE v. WORTH, N. Car., 21 S. E. Rep. 204.

108. TROVER.—In an action by an executor for the conversion of a note alleged to belong to the estate, defendant, one of testator's household, testified that testator indorsed the note, and gave it to her, and that she had no other income; and showed that, as the interest on the note was collected, deposits in equal amount were made by her on her bank account. Plaintiff introduced evidence that just after the funeral defendant told a legatee that the note was among testator's papers, and that afterwards she turned it over to the executor, together with such papers. Defendfendant denied the statement made to the legatee, and testified that she merely said the note was "all right:' Held that, though it appeared that immediately upon the delivery of the note to the executor he returned it to defendant, saying that it was hers, and never afterwards demanded it, and that subsequently he told her to collect it, and keep the proceeds, she was liable therefor in trover.—HARRIS v. CABLE, Mich., 62 N. W. Rep. 582.

109. TRUSTS—Contract—Enforcement.—A stakeholder or custodian of a fund, who makes a contract with a claimant to the fund for a payment to him of a portion thereof, in consideration of retaining the balance for himself, cannot in a suit on the contract, and in the absence of express provisions therein, require the complainant to bring in other claimants to fund, or require an adjudication upon the rights of these claimants or other possible claimants to the fund, as precedent to a right of recovery under the contract.—LUDLOW v. STRONG, N. J., 31 Atl. Rep. 409.

110. TRUST — Statements of Grantee in Deed.—In an action to have lands held under a deed absolute on its face, declared to be held in trust, plaintiff must establish by a preponderance of evidence an agreement trust in pursuance to which the deed was executed.—SHERMAN v. SANDELL, Cal., 39 Pac. Rep. 797.

111. VENDOR'S LIEN—Enforcement.—In an action to enforce a vendor's lien, the defense that the deed did not include certain land which the plaintiff had shown to the defendant before purchase is overcome by evidence that the attorney who drew the deed acted under instructions, assented to by both parties, that the lands were to be described in the conveyance according to the deeds furnished him, which did not contain the omitted land which, to the knowledge of the parties, was held under a parol agreement.—MOORE v. LEE, Ala., 17 South. Rep. 15.

112. VENDOR AND VENDEE—Sale of Land—Misrepresentations.—When a purchaser has been induced, by a material representation of the vendor, to buy, he has a right to have the contract canceled, correlative with that of the vendor to disaffirm the sale when he has been defrauded.—WILSON v. CARPENTER'S ADM'R, Va., 21 S. E. Rep. 243.

113. WATER — Rights of Riparian Owners.—Where lands of a riparian owner are not injured by a diversion of water above them, or where, if the diversion were enjoined, such water would not, owing to ditches built by him, flow by the lands in its natural channel, the diversion will not be enjoined.—VERNON IRRIGATION CO. v. CITY OF LOS ANGELES, Cal., 39 Pac. Rep. 762.

114. WATER RIGHTS—Public Lands.—One desiring to appropriate the water of a stream on vacant public land of the United States may take possession of and use a ditch already constructed on the land, and not in the actual possession of another.—UTT v. FREY, Cal., 39 Pac. Rep. 807.

115. WILL—Construction.—Where, by a codicil, testator recites the gift in the will of an undivided half of the residuary estate to his widow, and declares that she shall instead have an undivided third thereof free and clear from all debts, legacies, expenses of administration, and other charges, she is entitled to one undivided third of testator's personal estate after delivery of specific legacies the expenses and pecuniary legacies to be paid out of the residue after delivery of the specific legacies and the payment to the widow of her undivided third.—ADDEMAN v. RICE, R. I., 31 Atl. Rep. 429.

116. WILL—Devise Over.— A testator devised his real estate to his children, subject to the dower of his wife, stating, that in case of the death of both his children "leaving no issue," the property devised to them and their issue should pass to a certain missionary society. By another clause he referred to the possibility of a sale of some of the realty, which, as the will contained no power of sale, could be made only by his widow and children. He also created two trust estates, the income of which was to be paid to his children for life, and, on their death without issue, the principal sums were to go to the missionary society. He also, at the close of his will, recited that he had given everything to his children, and urged them to bestow large sums in charity: Held, that the missionary society was to take only upon the death of the children without issue in testator's life-time.—BENSON v. CORBIN, N. Y., 40 N. E. Rep. 11.

117. WILL—Limitation Over. — Testator devised his property to trustees, with power to divest the proceeds, and with instructions to divide the income "in four equal parts, namely: To my wife, C, one part during her life time; after her death her share to revert to my trustees for the benefit of my three children, their heirs and assigns, under the supervision of my trustees as above mentioned: S one-third, F one-third and K one third:" Held, that the wife took the beneficial interest for life in one quarter of the property, with remainder to the three children named, absolutely.—HOPKINS v. KENT, N. Y., 40 N. E. Rep. 4.

118. WILL—Specific Legacy. — A gift in a will to a nephew, the owner of a tract of land, of $400, "the said $400 to be paid by the executor by assigning and transferring" to the legatee a certain mortgage on the land, is to a specific legacy, and in case the mortgage is discharged before testator's death, the legatee is not entitled to receive $400 in money.—WHEELER v. WOOD, Mich., 62 N. W. Rep. 577.

119. WILL—Testamentary Powers.—Where the will of the donee of a power does not refer to the power, nor specifically to the property controlled by it, but merely devises all her estate, real and personal, it being shown that the realty subject to the power was vested in the donee's father, who survived her, and that she had personal, but no real, property, such devise was not an execution of the power.—MASON v. WHEELER, R. I., 31 Atl. Rep. 426.

120. WITNESS—Criminating Evidence.—Under Const. art. 1, § 11, providing that no person shall be compelled to give evidence against himself, a witness in divorce proceeding cannot be compelled to answer whether he ever had criminal intercourse with the wife.—SMITH v. SMITH, N. Car., 21 S. E. Rep. 196.

121. WITNESS — Impeachment.—A witness may be impeached by asking him on cross-examination as to whether he is at the time working out a fine for theft. —SENTELL v. STATE, Tex., 30 S. W. Rep. 226.